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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff,

v.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No. 3:21-cv-03496-AMO

**DEFENDANT'S NOTICE OF MOTION
AND MOTION IN LIMINE NO. 1 TO
EXCLUDE OUT-OF-COURT
HOSPITAL STATEMENTS**

Date: November 25, 2024
Time: 11:00 a.m.
Courtroom: 10

The Honorable Araceli Martínez-Olguín

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 25, 2024 at 11:00 a.m., or as soon thereafter as this matter may be heard before the Honorable Araceli Martínez-Olgúin, District Judge in the United States District Court for the Northern District of California, at 450 Golden Gate Avenue, Courtroom 10, 19th Floor, San Francisco, CA 94102, Defendant Intuitive Surgical, Inc. (“Intuitive”) will and hereby does move the Court for an order prohibiting Plaintiff Surgical Instrument Service Co., Inc. (“SIS”) from introducing into evidence any: (1) testimony from live witnesses referencing or purporting to repeat or convey out-of-court statements made by representatives of hospitals or group purchasing organizations (“hospital declarants”); (2) deposition testimony from non-party witnesses referencing or purporting to repeat or convey out-of-court statements made by hospital declarants; or (3) documents containing out-of-court written statements by hospital declarants or written statements referencing or purporting to convey out-of-court statements made by hospital declarants.

The relief Intuitive seeks through this Motion is authorized by the Federal Rules of Evidence, including but not limited to Rules 403, 701, 801, 802, and 805, and by applicable case law. This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support thereof, the accompanying Declaration of Paul D. Brachman and attached exhibits, other filings in this matter, and the oral argument of counsel.

PRELIMINARY STATEMENT

SIS disclosed in written discovery 54 representatives of non-party hospitals and group purchasing organizations (together, “hospitals”) that purportedly refused to work with SIS due to Intuitive’s allegedly anticompetitive conduct. Ex. 1, Response to Interrogatory Nos. 2 & 3, at 5–9.¹ Only *one* of those individuals was deposed,² and SIS has made the strategic choice to put none on its witness list for trial.

Instead, it appears that SIS will attempt to build its case at trial using several categories of inadmissible hearsay: (1) testimony from SIS witnesses Greg Posdal and Keith Johnson purporting to convey what they were told in out-of-court statements by hospital declarants; (2) deposition testimony from non-party witnesses purporting to relay out-of-court statements made by hospital declarants; and (3) documents containing out-of-court written statements by hospitals or surgeons or written statements purporting to convey what hospital employees or surgeons said to someone else. Such statements, a non-exhaustive list of which are compiled in Appendix A hereto, are inadmissible hearsay without exception and should be excluded. Fed. R. Evid. 801, 802, 805. To promote the orderly and efficient presentation of evidence at trial, the Court should make clear before trial that SIS cannot attempt to portray the supposed views of hospitals through out-of-court statements that will not be tested through cross-examination.

ARGUMENT

I. SIS WITNESSES CANNOT TESTIFY ABOUT OUT-OF-COURT STATEMENTS PURPORTEDLY MADE BY HOSPITAL REPRESENTATIVES

SIS will not present at trial any testimony from a single hospital to which it sold modified EndoWrist instruments. Instead, it appears that SIS will try to present the views of its customers, or would-be customers, by having its own fact witnesses, Posdal and Johnson, testify about what they were supposedly told by hospital representatives. For example, Johnson testified in his deposition that all or nearly all of the hospital representatives he met with told him that they “hemorrhage money to Intuitive Surgical” and were “looking for ways to reduce costs.” Ex. 2 at

¹ All references to “Ex.” refer to exhibits to the Declaration of Paul D. Brachman in Support of Defendant’s Motion in Limine No. 1 to Exclude Out-of-Court Hospital Statements.

² Cairo Wasfy of Ardent Health was deposed in *Restore Robotics LLC v. Intuitive Surgical, Inc.*, No. 5:19-cv-00055 (N.D. Fla.), but was asked no questions about Ardent’s dealings with SIS.

1 50:19–51:24. Johnson likewise testified about feedback from customers indicating that there was
 2 great demand for modified EndoWrists, Ex. 3 at 44:7–45:22, but that he was told by hospitals that
 3 they would not do business with SIS because of Intuitive, Ex. 4 at 53:21–54:5. Posdal’s testimony
 4 was even one or two layers further removed. He testified, for example, that “customers said they
 5 were concerned about moving forward [with modified EndoWrists] because of what they were
 6 told by Intuitive.” Ex. 5 at 19:5–25. But Posdal did not speak to these customers himself about
 7 this issue—he based his testimony either on what Johnson purportedly told him or what he saw in
 8 documents (hearsay) about what hospitals purportedly said (double hearsay) about what Intuitive
 9 purportedly told hospitals (triple hearsay), *id.* at 20:2–21:2. Such out-of-court statements are not
 10 admissible at trial to prove that hospitals were in fact losing money on robotic surgery or looking
 11 for ways to reduce costs, nor are those statements admissible to prove that hospitals would have
 12 purchased modified EndoWrists from SIS but-for Intuitive. Fed. R. Evid. 801, 802. And Posdal’s
 13 testimony would be doubly inadmissible because it contains multiple levels of hearsay. Fed. R.
 14 Evid. 805. If SIS wanted to present such evidence to the jury, it should have deposed the hospitals
 15 it marketed to or identified them as trial witnesses. SIS did neither. The Court should not permit
 16 Johnson or Posdal to turn this trial into a game of telephone about what hospitals supposedly told
 17 them.

18 SIS bears the burden of establishing an exception to the hearsay rule. *See Los Angeles*
 19 *News Serv. v. CBS Broad., Inc.*, 305 F.3d 924, 934 (9th Cir. 2002). SIS may argue, for example,
 20 that second-hand accounts of hospital statements are admissible under Rule 803(3) as statements
 21 of hospitals’ motives for not dealing with a supplier. *Herman Schwabe, Inc. v. United Shoe Mach.*
 22 *Corp.*, 297 F.2d 906, 914 (2d Cir. 1962); *Consol. Credit Agency v. Equifax, Inc.*, 2005 WL
 23 6218038, at *2 (C.D. Cal. Jan. 26, 2005). That exception does not apply.³ Some out-of-court
 24 statements may be admissible under certain circumstances to prove what a customer *said* about its
 25 motives for not dealing with a supplier, but such statements are *not* admissible “*as evidence of the*
 26 *facts recited as furnishing the motives.*” *Schwabe*, 297 F.2d at 914;⁴ *Equifax, Inc.*, 2005 WL
 27

28 ³ Intuitive reserves the right to respond to any other exception SIS may argue is applicable here.

⁴ Unless otherwise indicated, all citations are omitted and all emphasis is added.

6218038, at *2 (same). In other words, SIS cannot use what hospital declarants supposedly told Johnson or Posdal (if Posdal talked to hospitals) to prove there was demand for SIS’s modified EndoWrists or that Intuitive squelched that demand. *Schwabe*, 297 F.2d at 913 n.9, 914 (letters stating that customers did not purchase plaintiff’s product due to lease agreement with defendant inadmissible); *see also Buckeye Powder Co. v. E.I. Dupont de Nemours Powder Co.*, 248 U.S. 55, 65 (1918) (customer statements properly excluded when offered “not as evidence of the motives of the speakers but as evidence of the facts recited as furnishing the motives”); *Stelwagon Mfg. Co. v. Tarmac Roofing Sys., Inc.*, 63 F.3d 1267, 1274–75 (3d Cir. 1995) (out-of-court customer statements inadmissible to prove “antitrust damages, in the form of lost sales”); *Amerisource Corp. v. RxUSA Int’l Inc.*, 2009 WL 235648, at *2 (E.D.N.Y. Jan. 30, 2009) (customer statements inadmissible to prove injury or damages).

Further, out-of-court statements of customer motive are only potentially admissible under limited conditions. For starters, the offering party must make a proffer of independently admissible evidence sufficient to show the reliability of the customer statement. SIS must proffer (among other things) evidence showing that the out-of-court statement was a “contemporaneous reaction to the alleged event that gave rise to the sentiment,” *Amerisource*, 2009 WL 235648, at *2, and that it was made by a declarant who had sufficient control over the customer’s purchasing decisions. *AngioDynamics, Inc. v. C.R. Bard, Inc.*, 2022 WL 4333555, at *3–5 (N.D.N.Y. Sept. 19, 2022); *see also Discover Fin. Servs. v. Visa U.S.A. Inc.*, 2008 WL 4560707, at *1 (S.D.N.Y. Oct. 9, 2008) (requiring “a proffer of the otherwise admissible proof that business was lost”). We respectfully submit that SIS cannot make these necessary proffers.

Even if SIS could do so, the Court should nevertheless exclude out-of-court hospital statements relayed through Johnson or Posdal because they are unreliable on their face. The Court has discretion to exclude evidence of customer motive “in view of the risk of insincerity in a potential customer’s statement why products were not being ordered.” *Herman Schwabe*, 297 F.2d at 914 n.10. That risk is acute here because the supposed hospital statements are not contained in contemporaneous written statements, but instead would be relayed by, and filtered through, SIS witnesses—each of whom has an interest in attributing SIS’s failures to Intuitive. *AngioDynamics*,

1 *Inc. v. C.R. Bard, Inc.* is instructive. There, as here, the plaintiff sought to present testimony about
 2 out-of-court statements made by hospital customers to plaintiff's sales representatives, in which
 3 the out-of-court declarants purportedly said they would have purchased plaintiff's product but-for
 4 the defendant's allegedly anticompetitive conduct. 2022 WL 4333555, at *4. The court held that
 5 such testimony was "not sufficiently reliable for admission under" Rule 803(3) because it was
 6 "self-serving" and the defendant "had no opportunity to cross-examine any of the relevant
 7 [declarants]." *Id.*; see also *Amerisource*, 2009 WL235648, at *2–3 (excluding "particularly
 8 troublesome" statements "offered to prove the elements of the" claim because opposing party
 9 would have "no way of cross-examining the declarants or their sources"). For the same reasons,
 10 the Court should bar Johnson and Posdal from relaying or referencing in their trial testimony out-
 11 of-court statements by hospital declarants who have not been, and will not be, cross-examined.

12 **II. NON-PARTY DEPONENTS CANNOT TESTIFY ABOUT OUT-OF-COURT** 13 **STATEMENTS MADE BY OTHER HOSPITAL REPRESENTATIVES**

14 SIS likewise should not be permitted to play deposition testimony from non-party
 15 witnesses relaying out-of-court statements purportedly made by hospital representatives who were
 16 *not* deposed.

17 For example, SIS has indicated on its trial witness list that it will call by deposition Edward
 18 Harrich, a representative from Pullman Regional Hospital who was deposed in *Rebotix Repair*
 19 *LLC v. Intuitive Surgical, Inc.*, No. 20-cv-02274 (M.D. Fla.). The parties have not yet exchanged
 20 deposition designations. But we are concerned that SIS will attempt to play statements in which
 21 Harrich claimed that remanufactured EndoWrists "worked just like the nonrepaired ones" based
 22 on "interview[s] [he indicated he conducted with] surgeons and the technicians . . . involved in [a]
 23 trial of the Rebotix-repaired EndoWrists." Ex. 6 at 39:24-40:8.

24 Such testimony referencing or relaying out-of-court statements allegedly made by surgeons
 25 and technicians at Pullman will not be offered to show the hospital's state of mind or motive for
 26 doing, or not doing, business with SIS. Pullman was not a hospital that SIS tried to do business
 27 with. Ex. 1, Response to Interrogatory No. 2, at 5–9. Rather, it appears that SIS will attempt to
 28 use Harrich's testimony about what he was purportedly told by unidentified surgeons and

1 technicians—who were themselves not disclosed as fact or expert witnesses—to prove the truth of
 2 what those other individuals supposedly told Harrich—*i.e.*, that modified EndoWrists function just
 3 like Intuitive EndoWrists. Such out-of-court statements are inadmissible hearsay.

4 **III. OUT-OF-COURT STATEMENTS MADE BY OR ATTRIBUTED TO HOSPITAL**
 5 **REPRESENTATIVES IN DOCUMENTS ARE INADMISSIBLE HEARSAY**

6 It appears that SIS also intends to place before the jury out-of-court statements of hospital
 7 declarants contained or recounted in documents, even though the declarants will not testify at trial.
 8 These statements, too, constitute hearsay that does not fall within any exception.

9 For example, the document identified as Trial Ex. No. 510 on the parties’ Joint Exhibit
 10 List, Dkt. 278-2, Ex. 7, is an email chain containing an email from a hospital declarant, Dawn
 11 Watkins, to Intuitive asking Intuitive whether allowing SIS to modify its EndoWrist instruments
 12 would void the instrument warranty. Ms. Watkins’ email forwards another out-of-court statement
 13 by Manuela Cassidy, a representative from the GPO Vizient, stating that Kaiser Permanente and
 14 Legacy Health System were “capturing savings” by purchasing SIS’s modified EndoWrists.
 15 Neither statement falls under the Rule 803(3) exception.

16 SIS cannot use Ms. Watkins’ *question* to insinuate that the hospital did not do business
 17 with SIS because of concerns over voiding Intuitive’s warranty. Her out-of-court statement is not
 18 admissible under Rule 803(3) because it does not include any statement of the hospital’s reasons
 19 for refusing to deal with SIS. Even if it did, the statement would not be admissible because SIS
 20 will not be able to “lay a foundation at trial regarding [her] role in the decision” whether to do
 21 business with SIS. *AngioDynamics*, 2022 WL 4333555, at *5 (statements of motive must be
 22 “made by a declarant with a sufficient role in the hospital’s [] purchasing decision-making
 23 process”). For the same reasons, Ms. Cassidy’s statement is inadmissible to prove that Kaiser or
 24 Legacy did business with SIS because of “savings” described in her email. Ms. Cassidy is
 25 associated with Vizient, not the hospitals in question, and SIS has not established that Ms. Cassidy
 26 was a decisionmaker for either hospital. Moreover, out-of-court statements written by sales
 27 intermediaries (like Vizient) are “not reliable statements of [a] customer’s then-existing state of
 28 mind.” *Alarm Fin. Enterprises, LP v. Alarm Prot. Tech., LLC*, 743 F. App’x 786, 788 (9th Cir.

1 2018).

2 Other documents likewise contain no statement of customers' motives for refusing to deal
3 with SIS, but *do* contain multiple levels of hearsay on various subjects:

- 4 • Ex. 8 (Trial Ex. No. 355) is an op-ed by a non-testifying surgeon stating that: "Intuitive
5 reps often encourage trainees to switch out instruments and select higher-cost instruments,"
6 *id.* at 5, and referencing yet another surgeon's out-of-court statement describing the da
7 Vinci as "driving a Ferrari versus the laparoscopic '57 Chevy," *id.* at 3.
- 8 • Ex. 9 (Trial Ex. No. 844) is a presentation by a non-testifying surgeon referencing "the [da
9 Vinci] 'monopoly' issue."
- 10 • Exs. 10-12 (Trial Ex. No. 343; Trial Ex. No. 535; and Trial Ex. No. 717) are articles and
11 reports quoting hospital executives and surgeons.

12 These statements are not statements of hospital motive for dealing, or not dealing,
13 with SIS, so they cannot be admitted under Rule 803(3). Nor are they admissible under the
14 business records exception. That "exception applies only if the person furnishing the information
15 to be recorded is 'acting routinely, under a duty of accuracy, with employer reliance on the result.'" *United States v. Pazsint*, 703 F.2d 420, 424 (9th Cir. 1983) (citation omitted). SIS has not—and
16 cannot—establish that any of the out-of-court statements identified above were made under any
17 duty of accuracy. *See In re Cypress Semiconductor Sec. Litig.*, 891 F. Supp. 1369, 1374 (N.D.
18 Cal. 1995) (newspaper articles inadmissible hearsay), *aff'd sub nom. Eisenstadt v. Allen*, 113 F.3d
19 1240 (9th Cir. 1997); *Shimozono v. May Dep't Stores Co.*, 2002 WL 34373490, at *13 (C.D. Cal.
20 Nov. 20, 2002) (excluding survey responses); *Low v. Trump Univ., LLC*, 2016 WL 6647793, at *9
21 (S.D. Cal. Nov. 10, 2016) (customer evaluations not business records). And finally, even if the
22 types of documents described above were business records, they contain inadmissible hearsay-
23 within-hearsay for which there is no independent exception. *United States v. Holmes*, 2021 WL
24 2044470, at *25 (N.D. Cal. May 22, 2021) ("Articles that feature quotations from people other
25 than their authors constitute hearsay within hearsay.").
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1 **IV. OUT-OF-COURT HOSPITAL STATEMENTS ARE INADMISSIBLE FOR**
2 **ADDITIONAL REASONS**

3 Many of the examples of out-of-court statements identified above are inadmissible for
4 additional reasons. For example, statements by out-of-court declarants describing Intuitive as a
5 “monopolist,” *e.g.*, Ex. 9, Trial Ex. No. 844, are improper lay opinion, Fed. R. Evid. 701, and any
6 (slight) probative value such statements may have is substantially outweighed by the undue
7 prejudice Intuitive would suffer if SIS were permitted to use out-of-court statements of non-
8 witnesses to address a central legal issue in this case, Fed. R. Evid. 403.

9 Nor should SIS’s experts be permitted to use Rule 703 as a backdoor to testify about these
10 otherwise inadmissible hearsay statements. “Rule 703 does not authorize admitting hearsay on the
11 pretense that it is the basis for expert opinion when, in fact, the expert adds nothing to the out-of-
12 court statements other than transmitting them to the jury.” Charles Alan Wright & Arthur R.
13 Miller, 29 *Fed. Prac. & Proc. Evid.* § 6273 (2d ed. 2024).

14 **CONCLUSION**

15 For the foregoing reasons, Intuitive respectfully requests that the Court grant this motion.
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1 Dated: October 28, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

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*Attorneys for Defendant
Intuitive Surgical, Inc.*

CERTIFICATE OF SERVICE

On October 28, 2024, I caused a copy of Intuitive's Motion in Limine No. 1 to Exclude Out-of-Court Hospital Statements to be electronically served via email on counsel of record for Surgical Instrument Service Company, Inc.

Dated: October 28, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

APPENDIX A¹

Category	Relevant Documents and Deposition Testimony
<p>Examples of Anticipated Testimony from SIS Witnesses Relaying Out-of-Court Hospital Statements</p>	<ul style="list-style-type: none"> Ex. 2, 10/27/2022 Keith Johnson 30(b)(1) Dep. Tr., at 51:14-24 (hospital representatives stated that they “hemorrhage money to Intuitive Surgical” and were “looking for ways to reduce costs”) Ex. 3, 10/27/2022 Keith Johnson 30(b)(6) Dep. Tr., at 44:7-45:22 (hospital representatives stated they were interested in SIS’s modified EndoWrist) Ex. 4, 10/27/2022 Keith Johnson 30(b)(6) Dep. Tr., at 50:25-51:22 (hospital representatives stated they feared “retaliation” from Intuitive); <i>id.</i> at 53:21-54:5 (hospital representatives stated they would not do business with SIS because of Intuitive) Ex. 5, 5/10/2021 Greg Posdal Dep. Tr. at 19:21-25 (“customers said they were concerned about moving forward [with modified EndoWrists] because of what they were told by Intuitive”)
<p>Examples of Anticipated Non-Party Deposition Testimony Relaying Out-</p>	<ul style="list-style-type: none"> Ex. 6, Edward Harrich (Pullman Hospital) Dep. Tr., at 39:24-40:8 (“surgeons and the technicians . . . involved in [a] trial of the Rebotix-repaired EndoWrists” stated

¹ This is a non-exhaustive list of testimony and documents that SIS has indicated it intends to offer at trial, *see* Joint Proposed Final Pretrial Order, App. E, Parties’ Witness Lists, Dkt. 278-3; *id.*, App. D, Joint Exhibit List, Dkt. 278-2, and that includes hearsay by hospital declarants of the type discussed in this motion in limine. Intuitive reserves all rights to object to any and all hearsay statements in SIS’s forthcoming deposition designations and that may be presented at trial.

<p>of-Court Hospital Statements</p>	<p>“repaired” EndoWrists “worked just like the nonrepaired ones”)</p> <ul style="list-style-type: none"> Ex. 13, Mike Madewell (Panama City Surgical Center) Dep. Tr., at 24:16-25:3 (surgeons said that if Restore’s modified EndoWrists “worked fine” then they were “happy with it”) Ex. 14, 5/4/2021 Clif Parker (Restore) Dep. Tr., at 99:22-104:1 (distributors that dealt with numerous potential customers, including Indiana University and West Virginia University, indicated that those customers were interested in EndoWrist “repair”); 150:4-151:2 (surgeons and other hospital personnel said that “EndoWrist scissor blades can become too dull to operate effectively before their 10th use”); Ex. 15, 10/25/2022 Clif Parker Dep. Tr. at 139:23-140:23 (prospective customers using X/Xi da Vinci systems said “they would sign contracts with [Restore] tomorrow and do business with [Restore] tomorrow” if Restore could “repair” X/Xi EndoWrists) Ex. 16, 11/03/2022 Kevin May (Restore) Dep. Tr. 74:10-75:16, 140:6-142:10 (hospital representatives and/or sales representatives that spoke to hospital representatives stated that hospitals that had been interested would not use modified EndoWrists after receiving “cease and desist” letters from Intuitive) Ex. 17, Chris Gibson (Rebotix) Tr. 159:24-161:17 (SIS stated that several large potential customers in Arizona
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	<p>would not move forward with SIS or Rebotix modified EndoWrists because Intuitive had “threaten[ed]” to stop servicing their da Vinci robot)</p> <ul style="list-style-type: none"> Ex. 18, Jake Colletti (Medline) Tr. 10:14-12:18, 19:12-17, 20:3-16 (potential customers pitched on modified EndoWrists expressed concerns about contractual obligations and Intuitive interference as well as clinical objections)
<p>Examples of Documents Containing Out-of-Court Statements by or Attributed to Hospital Representatives</p>	<p>Ex. 7 (Trial Ex. No. 510); Ex. 8 (Trial Ex. No. 355); Ex. 9 (Trial Ex. No. 844); Ex. 10 (Trial Ex. No. 343); Ex. 11 (Trial Ex. No. 535); Ex. 12 (Trial Ex. No. 717) at 6-9; Ex. 19 (Trial Ex. No. 136); Ex. 20 (Trial Ex. No. 430); Ex. 21 (Trial Ex. No. 470); Ex. 22 (Trial Ex. No. 479); Ex. 23 (Trial Ex. No. 509); Ex. 24 (Trial Ex. No. 517); Ex. 25 (Trial Ex. No. 519); Ex. 26 (Trial Ex. No. 528); Ex. 27 (Trial Ex. No. 539), at -8204, -8220-21; Ex. 28 (Trial Ex. No. 390) at 2-4; Ex. 29 (Trial Ex. No. 840).</p>

CERTIFICATE OF SERVICE

On October 28, 2024, I caused a copy of Appendix A to Intuitive's Motion in Limine No. 1 to Exclude Out-of-Court Hospital Statements to be electronically served via email on counsel of record for Surgical Instrument Service Company, Inc.

Dated: October 28, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

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Attorneys for Defendant Intuitive Surgical, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,**

Plaintiff,

v.

INTUITIVE SURGICAL, INC.,
Defendant.

Case No. 3:21-cv-03496-AMO

**DECLARATION OF PAUL D.
BRACHMAN IN SUPPORT OF
DEFENDANT'S MOTION IN
LIMINE NO. 1 TO EXCLUDE OUT-
OF-COURT HOSPITAL
STATEMENTS**

The Honorable Araceli Martínez-Olguín

1 I, PAUL D. BRACHMAN, declare as follows:

2 1. I am an attorney licensed to practice in New York and the District of Columbia,
3 and am admitted *pro hac vice* to practice before this Court. I am a partner with the law firm of
4 Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), counsel for Intuitive Surgical,
5 Inc. (“Intuitive”) in this matter. I have personal knowledge of the facts set forth herein, and if
6 called to testify, I could and would testify competently hereto.

7 2. Attached to this declaration as **Exhibit 1** is a true and correct copy of Plaintiff
8 Surgical Instrument Service Company, Inc.’s Answers and Objections to Defendant’s
9 Interrogatories First Set – Nos. 1-3 dated May 20, 2022.

10 3. Attached to this declaration as **Exhibit 2** is a true and correct copy of excerpts of
11 the transcript of the 30(b)(1) deposition of Keith Johnson taken in this matter, on October 27,
12 2022, which was previously filed on the docket at Dkt. 127-20.

13 4. Attached to this declaration as **Exhibit 3** is a true and correct copy of excerpts of
14 the transcript of the 30(b)(6) deposition of Keith Johnson taken in this matter, on October 27,
15 2022, which was previously filed on the docket in this matter at Dkt. 127-21.

16 5. Attached to this declaration as **Exhibit 4** is a true and correct copy of excerpts of
17 the transcript of the 30(b)(6) deposition of Keith Johnson taken in this matter on October 27,
18 2022.

19 6. Attached to this declaration as **Exhibit 5** is a true and correct copy of excerpts of
20 the transcript of the 30(b)(6) deposition of Greg Posdal taken in *Restore Robotics LLC v.*
21 *Intuitive Surgical, Inc.*, No. 19-cv-00055 (N.D. Fla.) on May 10, 2021.

22 7. Attached to this declaration as **Exhibit 6** is a true and correct copy of excerpts of
23 the transcript of the 30(b)(6) deposition of Edward Harrich taken in *Rebotix Repair LLC v.*
24 *Intuitive Surgical, Inc.*, No. 20-cv-02274 (M.D. Fla.) on May 24, 2021.

25 8. Attached to this declaration as **Exhibit 7** is a true and correct copy of an email
26 thread identified on the Joint Proposed Final Pretrial Order, App. D, Joint Exhibit List, Dkt.
27 278-2, as Trial Ex. No. 510 and produced at Intuitive-00110255-58.

1 9. Attached to this declaration as **Exhibit 8** is a true and correct copy of an article
2 titled “Op-Ed: Addressing Our Da Vinci Addiction” identified on the Parties’ Joint Exhibit List
3 as Trial Ex. No. 355. The article is available at
4 <https://www.medpagetoday.com/surgery/generalsurgery/89175>.

5 10. Attached to this declaration as **Exhibit 9** is a true and correct copy of a screenshot
6 of a presentation titled “Robotic Surgical Systems in Urology” identified on the Parties’ Joint
7 Exhibit List as Trial Ex. No. 844.

8 11. Attached to this declaration as **Exhibit 10** is a true and correct copy of an article
9 titled “Technology Widens Care Options for Rural Hospitals” identified on the Parties’ Joint
10 Exhibit List as Trial Ex. No. 343. The article is available at
11 [https://www.ruralhealthinfo.org/rural-monitor/technology-widens-care-](https://www.ruralhealthinfo.org/rural-monitor/technology-widens-care-options#:~:text=In%20Washington%20state%2C%20medical%20robots,Lincoln%20Hospital%20in%20Davenport%2C%20Wash.)
12 [options#:~:text=In%20Washington%20state%2C%20medical%20robots,Lincoln%20Hospital%](https://www.ruralhealthinfo.org/rural-monitor/technology-widens-care-options#:~:text=In%20Washington%20state%2C%20medical%20robots,Lincoln%20Hospital%20in%20Davenport%2C%20Wash.)
13 [20in%20Davenport%2C%20Wash.](https://www.ruralhealthinfo.org/rural-monitor/technology-widens-care-options#:~:text=In%20Washington%20state%2C%20medical%20robots,Lincoln%20Hospital%20in%20Davenport%2C%20Wash.)

14 12. Attached to this declaration as **Exhibit 11** is a true and correct copy of a report
15 titled “Surgical Needs Exploration: Qualitative IDI Research Report” identified on the Parties’
16 Joint Exhibit List as Trial Ex. No. 535 and produced at Intuitive-00246469-91.

17 13. Attached to this declaration as **Exhibit 12** is a true and correct copy of a report
18 titled “Digital Health: Robotic Surgery and the OR of the Future” identified on the Parties’ Joint
19 Exhibit List as Trial Ex. No. 717.

20 14. Attached to this declaration as **Exhibit 13** is a true and correct copy of excerpts of
21 the transcript of the deposition of Mike Madewell taken in *Restore Robotics LLC v. Intuitive*
22 *Surgical, Inc.*, No. 19-cv-00055 (N.D. Fla.) on June 11, 2021.

23 15. Attached to this declaration as **Exhibit 14** is a true and correct copy of excerpts of
24 the transcript of the deposition of Clif Parker taken in *Restore Robotics LLC v. Intuitive Surgical,*
25 *Inc.*, No. 19-cv-00055 (N.D. Fla.) on May 4, 2021.

26 16. Attached to this declaration as **Exhibit 15** is a true and correct copy of excerpts of
27 the transcript of the deposition of Clif Parker taken in this matter on October 25, 2022.

1 17. Attached to this declaration as **Exhibit 16** is a true and correct copy of excerpts of
2 the transcript of the deposition of Kevin May taken in this matter on November 3, 2022.

3 18. Attached to this declaration as **Exhibit 17** is a true and correct copy of excerpts of
4 the transcript of the deposition of Chris Gibson taken in *Rebotix Repair LLC v. Intuitive*
5 *Surgical, Inc.*, No. 20-cv-02274 (M.D. Fla.) on June 22, 2021.

6 19. Attached to this declaration as **Exhibit 18** is a true and correct copy of excerpts of
7 the transcript of the deposition of Jake Colletti taken in *Restore Robotics LLC v. Intuitive*
8 *Surgical, Inc.*, No. 5:19-cv-00055 (N.D. Fla.) on May 7, 2021.

9 20. Attached to this declaration as **Exhibit 19** is a true and correct copy of an email
10 thread identified on the Parties' Joint Exhibit List as Trial Ex. No. 136 and produced at
11 SIS095115-39.

12 21. Attached to this declaration as **Exhibit 20** is a true and correct copy of an email
13 thread identified on the Parties' Joint Exhibit List as Trial Ex. No. 430 and produced at Intuitive-
14 00214231-34.

15 22. Attached to this declaration as **Exhibit 21** is a true and correct copy of an email
16 identified on the Parties' Joint Exhibit List as Trial Ex. No. 470 and produced at Intuitive-
17 00011487.

18 23. Attached to this declaration as **Exhibit 22** is a true and correct copy of an email
19 thread identified on the Parties' Joint Exhibit List as Trial Ex. No. 479 and produced at
20 Intuitive-00029346-47.

21 24. Attached to this declaration as **Exhibit 23** is a true and correct copy of an email
22 thread identified on the Parties' Joint Exhibit List as Trial Ex. No. 509 and produced at Intuitive-
23 00110252-54.

24 25. Attached to this declaration as **Exhibit 24** is a true and correct copy of an email
25 identified on the Parties' Joint Exhibit List as Trial Ex. No. 517 and produced at Intuitive-
26 00133628-30.

1 26. Attached to this declaration as **Exhibit 25** is a true and correct copy of a
2 document identified on the Parties' Joint Exhibit List as Trial Ex. No. 519 and produced at
3 Intuitive-00141567-68.

4 27. Attached to this declaration as **Exhibit 26** is a true and correct copy of an email
5 thread identified on the Parties' Joint Exhibit List as Trial Ex. No. 528 and produced at Intuitive-
6 00214231-34.

7 28. Attached to this declaration as **Exhibit 27** is a true and correct copy of an article
8 titled "Intuitive Surgical: What do experts think about J&J's new surgical robot?" identified on
9 the Parties' Joint Exhibit List as Trial Ex. No. 539 and produced at Intuitive-00278203-34.

10 29. Attached to this declaration as **Exhibit 28** is a true and correct copy of an article
11 titled "Surgical-robot costs put small hospitals in a bind" identified on the Parties' Joint Exhibit
12 List as Trial Ex. No. 390.

13 30. Attached to this declaration as **Exhibit 29** is a true and correct copy of an email
14 thread identified as Trial Ex. No. 840 and produced at Restore-00030379-84.

15 I declare under the penalty of perjury under the laws of the United States that the
16 foregoing is true and correct.

17
18
19 Dated: October 28, 2024

By: /s/ Paul D. Brachman

20 PAUL D. BRACHMAN
21
22
23
24
25
26
27
28

FILER'S ATTESTATION

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatory identified above has concurred in this filing.

Dated: October 28, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

Kenneth A. Gallo (*pro hac vice*)
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
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Email: kgallo@paulweiss.com

*Attorney for Defendant
Intuitive Surgical, Inc.*

EXHIBIT 1

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

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Attorneys for Plaintiff,

SURGICAL INSTRUMENT SERVICE COMPANY, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE

COMPANY, INC.,

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

CASE NO. 3:21-cv-03496-VC

Honorable Vince Chhabria

**PLAINTIFF SURGICAL INSTRUMENT
SERVICE COMPANY, INC.'S
ANSWERS AND OBJECTIONS TO
DEFENDANT'S INTERROGATORIES
FIRST SET - NOS. 1-3**

**PLAINTIFF'S ANSWERS AND OBJECTIONS TO DEFENDANT'S
INTERROGATORIES**

Plaintiff Surgical Instrument Service Company, Inc. ("SIS"), by and through its attorneys,
and pursuant to Rule 33 of the Federal Rules of Civil Procedure and the Local Rules of this

Court, answers and objects to Defendant Intuitive Surgical, Inc.'s ("Intuitive") First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

1. Plaintiff's investigation and development of all facts and circumstances relating to this action is ongoing. These answers and objections are made without prejudice to, and are not a waiver of, Plaintiff's right to rely on other facts or documents at trial.

2. By making the accompanying answers and objections to Defendant's interrogatories, Plaintiff does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Plaintiff makes the answers and objections herein without in any way implying that it considers the interrogatories, and answers to the interrogatories, to be relevant or material to the subject matter of this action.

3. A response to an interrogatory stating that objections and/or indicating that documents will be produced shall not be deemed or construed that there are, in fact, responsive documents, that Plaintiff performed any of the acts described in the interrogatory, or definitions and/or instructions applicable to the interrogatory, or that Plaintiff acquiesces in the characterization of the conduct or activities contained in the interrogatory, or definitions and/or instructions applicable to the interrogatory.

4. Plaintiff expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

5. Plaintiff will make available for inspection at Plaintiff's offices responsive documents. Alternatively, Plaintiff will produce copies of the documents.

GENERAL OBJECTIONS

1. Plaintiff objects to each instruction, definition, and interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Rules and Orders of the Court.

2. Plaintiff objects to each interrogatory that is overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiff objects to each instruction, definition, and interrogatory to the extent that it seeks information protected from disclosure by the attorney- client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Plaintiff occur, it is inadvertent and shall not constitute a waiver of any privilege.

4. To the extent any of Defendant's interrogatories seek answers that include expert material, including but not limited to survey materials, Plaintiff objects to any such interrogatories as premature and expressly reserves the right to supplement, clarify, revise, or correct any or all answers to such interrogatories, and to assert additional objections or privileges, in one or more subsequent supplemental response(s) in accordance with the time period for exchanging expert reports set by the Court.

5. Plaintiff incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, Plaintiff does not waive its right to amend its responses.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO.1

Identify, and describe the role of, all of Your Personnel involved in decisions regarding or evaluations or analyses of the repair or replacement of da Vinci Surgical Systems, EndoWrist Instruments, or any other robotic-assisted surgical technology, including with respect to the following areas: research and development, regulatory clearance, pricing, business strategy, marketing, sales, maintenance, testing, safety, efficacy or any other area in which You evaluated or analyzed the repair or replacement of da Vinci Surgical Systems, EndoWrist Instruments, or any other robotic-assisted surgical technology.

RESPONSE TO INTERROGATORY NO. 1

Plaintiff objects to this interrogatory as vague and ambiguous to the extent that it relies on the terms "role," "involved in," "decisions regarding," "evaluations," or "analyses," none of which are defined in Defendant's First Set of Interrogatories. Further, Plaintiff objects to this interrogatory as vague, ambiguous, and/or overbroad to the extent that it calls for information about "any other robotic-assisted surgical technology." Plaintiff also objects to this interrogatory as vague, ambiguous, overbroad and/or burdensome to the extent it calls for information with respect to the general categories of: "research and development, regulatory clearance, pricing, business strategy, marketing, sales, maintenance, testing, safety, efficacy or any other area." Providing such information in answering this interrogatory would be oppressive, unduly burdensome and unnecessarily expensive.

Subject to and without waiver of the foregoing objections, Plaintiff responds as follows to this interrogatory: Keith Johnson, Executive Vice President, Sales and Clinical Programs
Greg Posdal, President and CEO.

INTERROGATORY NO. 2

Identify all persons and/or entities You have contacted to sell or promote Your purported da Vinci and EndoWrist repair and refurbishment offering.

RESPONSE TO INTERROGATORY NO. 2

Plaintiff objects to this interrogatory as overbroad and burdensome to the extent it calls for the "identity" of persons and/or entities as that term is defined in Definition No. 6 of Defendant's First Set of Interrogatories. Plaintiff also objects to this interrogatory as vague, ambiguous, overbroad and/or burdensome to the extent it calls for information about persons or entities "contacted" to "sell" or "promote" services offered by Plaintiff. Providing such information in answering this interrogatory would be oppressive, unduly burdensome and unnecessarily expensive.

Subject to and without waiver of the foregoing objections, Plaintiff responds as follows to this interrogatory:

1. Banner Health System (33 hospitals)
 - a. Perry Kirwan, VP of Clinical Engineering
 - b. Tim Brooks, System Director Sterile Processing
2. Legacy Health (6 hospitals)
 - a. Raymond Mackay, Director of Supply Chain
 - b. Jerry Hutchison, Clinical Director
3. Providence Health System (53 hospitals)
 - a. Christopher Phan, Client Executive
 - b. John Harper, System Director Sterile Processing
4. MarinHealth
 - a. John Ayers, Peri-Operative Business Manager
 - b. Johanna Torres, SPD Manager

5. Honor Health (6 hospitals)
 - a. Tim Miller, VP of Supply Chain
 - b. Mark Dozier, Associate VP of Supply Chain
6. Methodist Hospital of Southern California
 - a. Daniel Shay, Director of Materials
 - b. Roxanne Contreras, SPD Manager
7. Memorial Care (3 Hospitals)
 - a. Becky Klungrester, Clinical Director
 - b. Mary Beth Joiner, Clinical Manager
8. University Medical Center Irvine
 - a. Charles Adams, Director of Clinical Management
 - b. Gene Abad, Director of Sourcing/Contracting
9. Kaiser Permanente (50+ hospitals)
 - a. Nestor Jarquin, System Sourcing Director
 - b. Donald Cabrera, System SPD
10. USC Medical Center
 - a. Jesse Lopez, Director Clinical Engineering
11. University of Illinois Medical Center
 - a. Kendra Pitts, Director Value Analysis
 - b. Maggie Popek, SPD Manager
12. Johns Hopkins MC
 - a. Jennifer Stevens, Clinical Support
 - b. Rudy Martinez, Clinical Support

13. Advocate Aurora Health System (24 hospitals)
 - a. Brian Mirsburger, Clinical Sourcing Manager
 - b. Thomas Lubotsky, Chief Supply Chain Officer
14. Ardent Health (33 hospitals)
 - a. Cairo Wasfy, VP of Supply Chain
 - b. William Manning, Sourcing Manager
15. University of Michigan Medical Center
 - a. Paul Helm, Client Support
16. Duke University Medical Center
 - a. Kevin Strong, Senior Client Manager
 - b. Jennifer Stickler, Senior Client Manager
17. Piedmont Healthcare (17 hospitals)
 - a. Ben Haygood, Sourcing Manager
 - b. Matt Lee, Manager Materials Management
18. Salinas Valley Medical Center
 - a. Melissa Aylard, Operations Manager
 - b. Juan Gomez, SPD Manager
19. Pomona Valley Medical Center
 - a. Michelle Medel, Director of Materials Management
 - b. Rich Santala, Director of Supply Chain
20. UHS (33 hospitals)
 - a. Christopher Nowak, Senior Director Technology Management
21. SSM (23 hospitals)

- a. Brad Forth, VP of Supply Chain
- b. Serina Seward, Senior Director
- 22. Redland Community Hospital
 - a. Bo Aceto, Director of Perioperative Services
 - b. Danny Avina, Materials Management
- 23. Northside Health (6 hospitals)
 - a. Randy Eccleston, SPD Director
 - b. Latasha Hall, Materials Management
- 24. Northeast Georgia Health (6 hospitals)
 - a. Barry Bryant, SPD Manager
- 25. Mayo Clinic
 - a. Kyle Shonley, Clinical Operations Administrator
- 26. Beth Israel Lahey Health (13 hospitals)
 - a. Ryan Furtado, Director SPD
 - b. Ralph Gibbs, Director SPD
- 27. Boston Children's Medical Center
 - a. Christine L'Heureux, Director of Supply Chain
 - b. Scott McLeod, Sourcing Manager
- 28. Indiana University Health
 - a. Andrew Rago, Senior Manager
- 29. Northwestern Memorial Healthcare
 - a. Kyle Shulfer, Strategic Sourcing Manager
- 30. Yankee Alliance (200+ facilities)

- a. Tom Kennedy, Contracting Manager
31. Vizient, Inc. (2,000+ facilities)
- a. Rand Ballard, Chief Customer Officer
 - b. Ryan Gay, Contracting

INTERROGATORY NO. 3

Identify all persons that refused to work with You due to Intuitive's purportedly anticompetitive conduct, including all persons You referred to in paragraphs 36 and 92 of the Complaint.

RESPONSE TO INTERROGATORY NO. 3

Plaintiff objects to this interrogatory as overbroad and burdensome to the extent it calls for the "identity" of persons and/or entities as that term is defined in Definition No. 6 of Defendant's First Set of Interrogatories.

Subject to and without waiver of the foregoing objections, Plaintiff responds to this interrogatory as follows: The requested persons are listed above in response to Interrogatory No. 2. Plaintiff believes no customer would work with it because of Intuitive's anticompetitive conduct.

Dated: May 20, 2022

HALEY GUILIANO LLP

By: /s/ Richard T. McCaulley

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Attorneys for Plaintiff
SURGICAL INSTRUMENT SERVICE
COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2022, I caused a copy of the foregoing **PLAINTIFF SURGICAL INSTRUMENT SERVICE COMPANY, INC.'S ANSWERS AND OBJECTIONS TO DEFENDANT'S INTERROGATORIES FIRST SET - NOS. 1-3** to be served *via* electronic mail to counsel of record:

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Attorneys for Defendant,
INTUITIVE SURGICAL, INC.

By: /s/ Karleigh Nguyen

EXHIBIT 2

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,) Case No.:
) 3:21-cv-03496-VC
Plaintiff,)
) Lead Case No.:
vs.) 3:21-cv-03825-VC
)
INTUITIVE SURGICAL, INC.,) Pages 1 to 65
)
Defendant)
_____)
IN RE: DA VINCI SURGICAL ROBOT)
ANTITRUST LITIGATION)
_____)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
_____)

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

DEPOSITION OF:

KEITH ROBERT JOHNSON

IN HIS PERSONAL CAPACITY

THURSDAY, OCTOBER 27, 2022

1:27 p.m.

REPORTED BY:

Vickie Blair

CSR No. 8940, RPR-CRR

JOB NO. 5539883

PAGES 1 - 68

Page 1

Deposition of KEITH ROBERT JOHNSON, the witness, taken
on behalf of the Defendant, on Thursday,
October 27, 2022, 1:27 p.m., before VICKIE BLAIR,
CSR No. 8940, RPR-CRR.

APPEARANCES OF COUNSEL VIA ZOOM:

FOR PLAINTIFF/COUNTER-DEFENDANT SURGICAL INSTRUMENT
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1 APPEARANCES OF COUNSEL VIA ZOOM: (Continued)
2 FOR THE PROPOSED CLASS:

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5 (610) 822-0203
(610) 822-0206
6 jsnyder@bonizack.com

7 ALSO PRESENT:

8 RAMON A. PERAZA, Videographer
9
10
11
12
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14
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*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

I N D E X

WITNESS	EXAMINATION	PAGE
KEITH ROBERT JOHNSON		
	(MR. CHAPUT)	6
	(MR. SNYDER)	47
	(MR. CHAPUT)	58

I N F O R M A T I O N R E Q U E S T E D

None

Q U E S T I O N S I N S T R U C T E D B Y C O U N S E L N O T T O A N S W E R

None

E X H I B I T S

EXHIBIT NO.	PAGE	DESCRIPTION
Exhibit 141	25	Email chain, Bates numbers SIS000366 and SIS000367
Exhibit 142	27	Spreadsheet, Bates number SIS000167
Exhibit 143	35	Si Recycling Program form, Bates number SIS196367
Exhibit 144	40	EndoWrist Recycling Program form, Bates numbers SIS146976 through SIS146978

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

1 Q And what is SIS's annual net profit? 13:31:44

2 A I'm not privy to that number. 13:31:54

3 Q Who owns SIS? 13:31:58

4 A Greg Posdal. 13:32:07

5 Q You mentioned also earlier that SIS is one 13:32:07

6 of three main competitors in its business. Am I 13:32:19

7 recalling that correctly? 13:32:23

8 A Yes. 13:32:24

9 Q Who are SIS's main competitors? 13:32:24

10 A STERIS IMS and AgilityHealth. 13:32:30

11 Q And are both STERIS and Agility national 13:32:38

12 ISOs? 13:32:50

13 A The IMS division of STERIS is an ISO, but 13:32:51

14 STERIS is an \$8 billion global sterilization company. 13:32:58

15 Q Do any of SIS's customers also have 13:33:03

16 contracts at the same time with either STERIS IMS or 13:33:16

17 Agility or do customers typically contract only with 13:33:23

18 one of the three organizations? 13:33:25

19 A I think typically -- typically it would be 13:33:26

20 one, but there is a lot of scenarios where two or three 13:33:30

21 organizations work with a -- any given hospital or 13:33:36

22 hospital system. 13:33:38

23 Q Does SIS compete at all with companies 13:33:38

24 like Benjamin Biomedical or Restore Robotics or 13:33:47

25 MediVision? 13:33:56

Page 9

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

1 your answers about that timeline be roughly the same? 14:52:00

2 MR. CHAPUT: Object to the form. 14:52:06

3 THE WITNESS: Yes, I'm -- I'm -- I'm a 14:52:09

4 sales guy, I'm looking for opportunities to sell. This 14:52:11

5 robotic program created an opportunity for SIS to 14:52:15

6 substantially increase the revenue of our organization, 14:52:18

7 a great opportunity, and that was what I -- I was -- I 14:52:20

8 was pumped about the opportunity. 14:52:24

9 BY MR. SNYDER: 14:52:25

10 Q Let's -- let's go -- let's go there next. 14:52:29

11 I just have a few questions. 14:52:33

12 This morning I believe you used the word 14:52:35

13 "monumental" in connection with the level of interest 14:52:41

14 in EndoWrist repair. 14:52:43

15 Is that a word that you used in that 14:52:44

16 context, Mr. Johnson? 14:52:46

17 A I believe I did, and I don't use that word 14:52:48

18 very often. 14:52:50

19 Q And are -- are there -- are there key -- 14:52:53

20 key moments or key events that you have in mind when 14:53:01

21 you refer to the monumental level of interest in 14:53:05

22 EndoWrist repair? 14:53:08

23 MR. CHAPUT: Object to the form. 14:53:11

24 THE WITNESS: Yeah, there's -- there's a 14:53:12

25 couple very distinct meetings that stick out in my 14:53:16

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1 head, yes. 14:53:18

2 BY MR. SNYDER: 14:53:20

3 Q And what -- what are those -- those 14:53:20

4 meetings that stick out? 14:53:26

5 A One of the biggest ones was the meeting 14:53:27

6 that we had with Advocate Aurora in Wisconsin. I'll 14:53:35

7 just say this, in -- in -- in every meeting that I had, 14:53:46

8 and I'm not saying some of them, I'm saying all of 14:53:50

9 them, the -- the level of interest from the people that 14:53:52

10 I met with, which was always usually the C-suite, VP of 14:53:58

11 supply chain, VP of perioperative services, chief 14:54:02

12 robotic surgeon, one of those groups, every single one 14:54:07

13 of them was absolutely excited about this program. 14:54:10

14 Every one of them used the word 14:54:15

15 "hemorrhage;" almost all -- I won't say every one, a 14:54:17

16 majority of the people I meet with said "We hemorrhage 14:54:23

17 money to Intuitive Surgical. We are looking for ways 14:54:28

18 to reduce costs." 14:54:30

19 They love the robot. They do. They all 14:54:31

20 love it. They understand what it does. 14:54:34

21 It's -- it's the -- the lack of being able 14:54:36

22 to bring these other services that we were offering to 14:54:37

23 the table to help them reduce their costs, and that was 14:54:41

24 what they were excited about. 14:54:44

25 Q A couple other names that came up earlier 14:54:51

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1	today I wanted to ask about.	14:54:54
2	You testified about Vizient.	14:54:56
3	Do you recall that?	14:54:57
4	A Uh-huh.	14:54:58
5	Q And what -- what is Vizient?	14:54:58
6	A So Vizient is the largest health care GPO	14:55:01
7	in the country.	14:55:09
8	Q What was Vizient's level of interest in	14:55:10
9	EndoWrist repair?	14:55:12
10	A I have met with the CEO of Vizient, the	14:55:18
11	chief customer officer of Vizient, in fact, the chief	14:55:21
12	customer officer of Vizient scheduled a meeting with	14:55:26
13	his six high level people that run the entire country	14:55:28
14	because that's how excited they were about this	14:55:32
15	program.	14:55:35
16	They don't -- Vizient doesn't get any	14:55:36
17	value from Intuitive Surgical, they don't get admin	14:55:38
18	fees from Intuitive Surgical, they don't get anything	14:55:43
19	from Intuitive Surgical.	14:55:47
20	So the fact that SIS had a program that	14:55:50
21	could reduce costs to health care, help the hospitals	14:55:52
22	reduce their cost for robotic surgery, and they could	14:55:55
23	bring value to their customers in the robotic space was	14:55:58
24	an absolute homerun for them.	14:56:01
25	Q And could -- can you describe generally	14:56:05

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1 how large Vizient is? I mean, you said they're the 14:56:11

2 largest, but what does that mean? 14:56:15

3 A Yeah, they represent, don't quote me 14:56:16

4 specifically, but they represent somewhere between 14:56:19

5 2,500 and 3,000 hospitals. 14:56:22

6 Q And what -- what's Vizient's geographic 14:56:24

7 scope? 14:56:29

8 A National, every state in the union. 14:56:29

9 Q Another -- another name that I believe 14:56:36

10 came up earlier today was Johns Hopkins. 14:56:37

11 Did you mention Johns Hopkins? 14:56:41

12 A Yes. 14:56:43

13 Q What do you recall about -- did you meet 14:56:43

14 with Johns Hopkins at any point? 14:56:45

15 A Yes. 14:56:48

16 Q What do you recall about that meeting? 14:56:48

17 A I could describe the gentleman to you 14:56:56

18 because I remember specifically what he looked like, I 14:56:57

19 believe he was the director of sourcing or the VP of 14:57:00

20 supply chain, and forgive me for not remembering his 14:57:04

21 title specifically, that meeting was teed up by the 14:57:08

22 Vizient director that -- the client executor that 14:57:13

23 managed that relationship with Johns Hopkins, and they 14:57:17

24 told them that they had a vendor that had a cost 14:57:19

25 savings program around robotic surgery. 14:57:21

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1 So me and one of my people spent an hour 14:57:24
2 on the phone with him, he was all about it, he loved 14:57:26
3 it, he -- we ended that call with him saying, "Keith, 14:57:32
4 let me talk to legal and supply chain, we'll look over 14:57:37
5 our contract, and we'll get back with you." 14:57:40
6 Q Now, you -- you've been in the -- in the 14:57:45
7 industry about 25 years or so. 14:57:48
8 Do I have that about right? 14:57:50
9 A Yes, since about late '99. 14:57:52
10 Q Okay. So since -- since '99, you've 14:57:54
11 gained a lot of experience. 14:58:01
12 Is that fair to say? 14:58:02
13 MR. CHAPUT: Objection to form. 14:58:04
14 BY MR. SNYDER: 14:58:08
15 Q Is it fair to say you're experienced in 14:58:08
16 the industry, Mr. Johnson? 14:58:10
17 A I would say yes. 14:58:11
18 Q And what's your view of Johns Hopkins' 14:58:12
19 level of sophisticated when it comes to patient safety? 14:58:17
20 MR. CHAPUT: Object to the form. 14:58:21
21 THE WITNESS: I don't think you would get 14:58:25
22 any higher. 14:58:26
23 BY MR. SNYDER: 14:58:30
24 Q Move on to another name. 14:58:32
25 Another one I believe that came up is Mayo 14:58:33

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1 Clinic. 14:58:33

2 Did I get that right? 14:58:37

3 A Yes, sir. 14:58:38

4 Q And did you ever talk with or meet with 14:58:39

5 the Mayo -- representatives of the Mayo Clinic? 14:58:41

6 A Yes. 14:58:44

7 Q And what -- was it an in-person meeting? 14:58:44

8 A They all took place over Zoom. 14:58:50

9 Q Okay. This is during the -- during the 14:58:52

10 pandemic? 14:58:54

11 A Yes, sir. 14:58:54

12 Q And what -- what do you recall about that 14:58:56

13 Zoom meeting with the Mayo Clinic? 14:58:58

14 A The meetings have all gone the same, and I 14:59:07

15 say that with all honesty, they -- they have a vested 14:59:09

16 interest in finding ways to reduce costs on their 14:59:14

17 robotic surgery. We explained to them the program, 14:59:17

18 they're excited about it. 14:59:21

19 And I didn't finish my statement before 14:59:22

20 about Johns Hopkins. 14:59:24

21 "Keith, this sounds great, let us do our 14:59:28

22 due diligence and we'll get back to you." Every single 14:59:31

23 one of those groups have come back, either via email or 14:59:35

24 a phone call saying, "Keith, Intuitive does not allow 14:59:39

25 us, they will not allow us to do your program, our 14:59:44

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1 contracts won't allow us to do it. We're being told 14:59:47
2 that this is void our warranty, we're being told this 14:59:51
3 will void our service agreement. As much as we want to 14:59:53
4 do it, we -- we can't take the risk of being penalized 14:59:55
5 or "being" -- I'm trying to think of the word they 14:59:58
6 always use -- or -- "or the pressure we would get from 15:00:02
7 Intuitive Surgical." 15:00:05

8 Q Okay. And I want to come back to that in 15:00:08
9 a -- in the next question, the question after this one. 15:00:11

10 But my first question is: What, given 15:00:14
11 your several decades of experience in this industry, 15:00:17
12 what's your view of the Mayo Clinic's level of 15:00:22
13 sophistication when it comes to patient safety? 15:00:26

14 MR. CHAPUT: Object to the form. 15:00:28

15 THE WITNESS: I would say there's four 15:00:29
16 hospital systems in the U.S. that kind of standalone, 15:00:34
17 and I think if you asked anybody in health care, they 15:00:38
18 would say the Mayo Clinic, the Cleveland clinic, Johns 15:00:41
19 Hopkins, and Cedars-Sinai are probably the four most 15:00:46
20 renowned teaching, quality of care, standard of care 15:00:54
21 organizations in the U.S. 15:00:59

22 BY MR. SNYDER: 15:01:07

23 Q And it's fair to say the Mayo Clinic 15:01:07
24 was -- was interested in EndoWrist repair? 15:01:10

25 MR. CHAPUT: Object to the form. 15:01:13

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EXHIBIT 3

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,) Case No.:
) 3:21-cv-03496-VC
Plaintiff,)
) Lead Case No.:
vs.) 3:21-cv-03825-VC
)
INTUITIVE SURGICAL, INC.,)
)
Defendant)
_____)
IN RE: DA VINCI SURGICAL ROBOT)
ANTITRUST LITIGATION)
_____)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
_____)

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

30(b)(6) DEPOSITION OF:

KEITH ROBERT JOHNSON

THURSDAY, OCTOBER 27, 2022

9:06 a.m. Mountain Standard Time

REPORTED BY:

Vickie Blair

CSR No. 8940, RPR-CRR

JOB NO. 5539883

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Page 1

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Deposition of KEITH ROBERT JOHNSON, the witness, taken
on behalf of the Defendant, on Thursday,
October 27, 2022, 9:06 a.m. Mountain Standard Time,
before VICKIE BLAIR, CSR No. 8940, RPR-CRR.

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I N D E X

WITNESS	EXAMINATION	PAGE
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KEITH ROBERT JOHNSON		
----------------------	--	--

(MR. CHAPUT)		
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		7
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I N F O R M A T I O N R E Q U E S T E D

None

Q U E S T I O N S I N S T R U C T E D B Y C O U N S E L N O T T O A N S W E R

None

E X H I B I T S

EXHIBIT NO.	PAGE	DESCRIPTION
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Exhibit 135	10	Defendant Intuitive Surgical, Inc.'s Notice of Deposition of Plaintiff Surgical Instrument Service Company, Inc., Pursuant to Fed. R. CIV. P. 30(b)(6)
Exhibit 136	57	Email chain with attachments, Bates numbers SIS095115 through SIS095139

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1 information did SIS have about Rebotix's capabilities 09:29:34

2 when SIS started its relationship with Rebotix? 09:29:41

3 MR. VAN HOVEN: Objection to form. 09:29:45

4 THE WITNESS: Can you ask that again, I 09:29:46

5 apologize. 09:29:51

6 BY MR. CHAPUT? 09:29:52

7 Q Sure. Maybe I can make it a little more 09:29:52

8 straightforward. 09:29:56

9 What did SIS know about Rebotix's 09:29:57

10 capabilities when it entered into the EndoWrist repair 09:29:59

11 business? 09:30:05

12 MR. VAN HOVEN: Objection to form. 09:30:05

13 THE WITNESS: So, based on our 09:30:05

14 longstanding relationship with Benjamin Biomedical, and 09:30:11

15 the quality products that they had been providing to us 09:30:16

16 for, like I said, over 25 years, we had every belief 09:30:19

17 that the products and services they were providing were 09:30:24

18 quality, and we went down, visited the lab, made sure 09:30:27

19 that we understood and saw the product that they were 09:30:32

20 developing and the service that they were providing, 09:30:36

21 felt really good about it, and were excited about it, 09:30:39

22 and learned everything we could about their testing 09:30:42

23 practices and what they were doing, and really pretty 09:30:45

24 much everything inside and out about that program 09:30:49

25 before we took it to market. 09:30:52

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1 BY MR. CHAPUT: 09:30:52

2 Q Have you ever observed the entirety of 09:30:56

3 what Rebotix calls a repair of an EndoWrist? 09:31:01

4 A Yes. 09:31:07

5 MR. VAN HOVEN: Object to form. 09:31:08

6 THE WITNESS: Yes. 09:31:08

7 BY MR. CHAPUT: 09:31:09

8 Q When did you observe that repair? 09:31:11

9 A I don't remember the specific dates, but 09:31:15

10 if I remember correctly, it was in the fall of '19. 09:31:24

11 Q And would you describe for me the repair 09:31:30

12 process that Rebotix performed that you observed? 09:31:42

13 A We observed the complete incoming 09:31:48

14 inspection process; we observed the chip replacement 09:31:55

15 process; and we also observed the complete outgoing 09:32:03

16 safety and function test of those devices. 09:32:08

17 Q Starting with the complete incoming 09:32:12

18 inspection that you observed, what steps were involved 09:32:24

19 in that incoming inspection? 09:32:27

20 A Being that that device is a very simple 09:32:33

21 laparoscopic instrument, we observed the functionality 09:32:39

22 of that device, the strength of the pulleys, the 09:32:43

23 sharpness of the scissors, the -- the grasping strength 09:32:48

24 of the forceps, all of those safety and function to 09:32:53

25 make sure that those devices met the original intended 09:32:57

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1 did not take any other steps to confirm that the chip 09:44:47

2 replacement process did not impact the EndoWrist's 09:44:51

3 safety? 09:44:53

4 A Not that I'm aware of. 09:45:01

5 Q Did SIS ever enter into a written 09:45:06

6 agreement with Rebotix regarding this EndoWrist 09:45:09

7 service? 09:45:12

8 A I believe that we did. 09:45:21

9 Q And when -- when would that have happened? 09:45:22

10 A If I remember correctly, it was October of 09:45:30

11 '19. 09:45:32

12 Q Apart from the EndoWrist business that 09:45:50

13 you've been describing, has SIS had any other business 09:45:53

14 relationship with Rebotix specifically? 09:45:55

15 A Not that I know of. 09:46:01

16 Q Can you -- can you walk me through how the 09:46:04

17 Rebotix Repair service worked from the SIS customer's 09:46:14

18 perspective, please. 09:46:18

19 A Can -- can you elaborate what you mean? 09:46:19

20 Q Sure. 09:46:26

21 So how did a customer go about having a -- 09:46:26

22 an EndoWrist repaired through this SIS Rebotix program 09:46:30

23 that you've described? 09:46:36

24 A So the nature of our business, we're a 09:46:36

25 national company, so we work in all the regions around 09:46:44

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1 the country, so we have team members and reps on the 09:46:48
2 ground, and we work with hospitals on a daily basis 09:46:51
3 picking up items and devices in need of service, 09:46:54
4 getting those to one of our labs, they are serviced and 09:46:57
5 then returned to the facility. 09:47:02

6 So this Rebotix program that we were 09:47:03
7 providing fell right in line with what we were doing 09:47:05
8 every day. 09:47:10

9 Q Was the service performed at one of SIS's 09:47:10
10 labs? 09:47:16

11 MR. VAN HOVEN: Objection to form. 09:47:18

12 THE WITNESS: We were -- every discussion 09:47:19
13 we had was about bringing it in-house and doing it 09:47:27
14 ourselves. In fact, a couple members of their team 09:47:29
15 came to Chicago and worked in our lab with us, and 09:47:37
16 our -- some of our technicians that were going to be 09:47:41
17 involved in this program were part of that, so we were 09:47:44
18 absolutely going to be doing this service in-house. 09:47:48

19 BY MR. CHAPUT: 09:47:51

20 Q Okay. So you said that you were "going to 09:47:51
21 be doing it in-house." 09:47:53

22 My question was: Did SIS ever actually 09:47:54
23 perform the service in-house? 09:47:57

24 A No. 09:47:58

25 Q So for all of the EndoWrist repairs that 09:48:00

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1 testing process? 10:06:18

2 A I'm not involved in the engineering and 10:06:18

3 the technical side of that, so what I'm personally 10:06:26

4 providing is more of a customer feedback, customer 10:06:29

5 thoughts, customer interest in that program, and what 10:06:35

6 it would mean to health care. 10:06:38

7 Q Describe for me the customer feedback and 10:06:39

8 customer thoughts, customer interests in that program, 10:06:47

9 please. 10:06:50

10 A How much time do we have? 10:06:50

11 Q Describe it at a high level to start with, 10:06:54

12 and we can -- 10:06:58

13 A Since this program started, the interest 10:07:01

14 from the hospital is monumental, through the roof. 10:07:03

15 The -- the interest in saving and reducing costs on 10:07:11

16 robotic surgery in the industry is something I've never 10:07:15

17 seen before in my 25 years of being in the surgical 10:07:17

18 business. 10:07:22

19 Q What hospitals have you spoken with about 10:07:23

20 the Xi program? 10:07:27

21 A Would you like me to list them? 10:07:29

22 Q Yes, please. 10:07:35

23 A This will be from the top of my head, so 10:07:36

24 I'll do the best I can, but well over -- the meetings 10:07:40

25 that we've had represent well over a thousand 10:07:46

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1 hospitals, probably. 10:07:48

2 Facility level, I'll just start to kind of 10:07:53

3 name them off regionally. Legacy Health system in 10:07:56

4 Portland, Oregon; Providence health system in the West 10:08:00

5 Coast; Sutter Health; Kaiser Permanente; memorial care; 10:08:04

6 the UC system in California; Banner Health System; 10:08:16

7 Honor Health; Baylor Scott & White in Texas; the 10:08:21

8 university health systems across the country, from 10:08:31

9 Michigan to Duke to North Carolina; Mayo Clinic; 10:08:35

10 Cleveland Clinic; Advocate Aurora; Lahey Health System; 10:08:50

11 Boston Children's Medical Center. 10:08:55

12 I can't believe I'm remembering all this 10:08:57

13 off the top of my head. 10:09:00

14 Piedmont health system, Grady in Atlanta, 10:09:02

15 Johns Hopkins. 10:09:13

16 That's the bulk of the direct hospitals 10:09:14

17 that I can recall having direct conversations with; 10:09:25

18 there's obviously much more than that. 10:09:27

19 And then, in addition to that, all the 10:09:29

20 Vizient conversations we've had, I've presented to all 10:09:33

21 four regions of Vizient, which basically covers well 10:09:41

22 over 2,000 hospitals in the United States. 10:09:45

23 Q Have you spoken with any of those 10:09:48

24 hospitals about the need for an EndoWrist repair 10:10:09

25 program to have FDA clearance? 10:10:11

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1 A I don't know if I understand what you're 10:10:20
2 asking me. 10:10:21

3 Q Have any of those hospitals told you that 10:10:22
4 they would be willing to purchase EndoWrist repair 10:10:29
5 services that were not cleared by the FT -- FDA? 10:10:33

6 MR. VAN HOVEN: Objection to form. 10:10:40

7 MR. SNYDER: Objection to form. 10:10:42

8 THE WITNESS: So I've been in the repair 10:10:42
9 business for well over 20 years, repairs don't require 10:10:44
10 FDA clearance, and to my recollection, nobody in any of 10:10:49
11 my conversations every brought up FDA clearance on the 10:10:58
12 repair. 10:11:01

13 BY MR. CHAPUT: 10:11:02

14 Q Does the Xi -- maybe let's -- let's step 10:11:02
15 back. 10:11:05

16 Does the Xi repair business that SIS is 10:11:06
17 exploring with Restore involve extending the number of 10:11:12
18 lives that an EndoWrist can be used for? 10:11:18

19 A We are currently working on developing a 10:11:20
20 program to extend the life of Xi instruments. 10:11:31

21 Q And is that the program that you have 10:11:34
22 spoken with hospitals about? 10:11:36

23 A The initial conversations we had with 10:11:47
24 hospitals was around the repair program of Si. 10:11:49

25 We then went to our recovery program, 10:11:57

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1 BY MR. CHAPUT: 11:47:09

2 Q And this is an email from you to a couple 11:47:09

3 folks at Vizient; is that right? 11:47:13

4 A Yes. 11:47:16

5 Q And what is Vizient? 11:47:21

6 A The largest GPO in the United States. 11:47:26

7 Q SIS has a relationship with Vizient; is 11:47:28

8 that right? 11:47:33

9 A Correct. 11:47:33

10 Q How does that -- how does the Vizient 11:47:33

11 relationship work for SIS? 11:47:42

12 A What -- what do you mean? 11:47:46

13 Q So what I'm trying to get at is how does 11:47:47

14 SIS end up performing services for specific customers 11:47:55

15 in the -- who -- who rely on Vizient for -- as a GPO? 11:48:02

16 A So Vizient -- Vizient contracts with 11:48:07

17 vendors from all aspects in a hospital, from toilet 11:48:12

18 paper to X-ray machines and security, they vet their 11:48:16

19 vendors, they go through a huge vetting process. 11:48:23

20 We are one of three vendors on Vizient 11:48:25

21 national contract in the instrument repair space, and 11:48:29

22 what they basically do is work with hospitals to find 11:48:35

23 ways to streamline services, reduce costs, and a lot of 11:48:38

24 other things, but that's really their main goal. 11:48:45

25 Q Okay. So a Vizient member can choose to 11:48:49

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1 enter into a contract with SIS for repair services or 11:48:51

2 it could choose another one of the Vizient service 11:48:55

3 providers; is that right? 11:48:59

4 MR. VAN HOVEN: Objection to form. 11:49:00

5 THE WITNESS: As far as I understand, 11:49:00

6 correct. 11:49:05

7 BY MR. CHAPUT: 11:49:06

8 Q What was the -- what was the reason for 11:49:10

9 your June 2020 email to Vizient that we're seeing in 11:49:13

10 Exhibit 137? 11:49:19

11 A I was given the opportunity present to the 11:49:20

12 national committee -- if I remember correctly, this was 11:50:00

13 a presentation to the national Vizient consultants that 11:50:05

14 bring cost savings opportunities to their members. 11:50:13

15 Q Got it. 11:50:19

16 If you would turn, please, to the first 11:50:20

17 attachment to the email, which is the -- a one-page 11:50:21

18 document ending 140, and this has the title "Beyond 11:50:25

19 Repair Double Check." 11:50:25

20 Do you recognize this document? 11:50:34

21 A Yes. 11:50:39

22 Q Does the beyond repair double check 11:50:39

23 program have anything to do with either da Vinci 11:50:41

24 surgical systems or EndoWrists? 11:50:44

25 A No. 11:50:50

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1 for identification and is attached 12:24:02

2 hereto.) 12:24:02

3 BY MR. CHAPUT: 12:24:02

4 Q And this is an email chain between you and 12:24:06

5 John Ayers and others at MarinHealth; is that right? 12:24:09

6 A Yes. 12:24:13

7 Q Who is John Ayers? 12:24:13

8 A John Ayers is the OR business manager at 12:24:16

9 MarinHealth. 12:24:24

10 Q Did SIS market its ability to perform 12:24:28

11 endo -- repairs on EndoWrist instruments to 12:24:31

12 MarinHealth? 12:24:35

13 A Yes. 12:24:36

14 Q Did MarinHealth and Mr. Ayers ultimately 12:24:37

15 agree to use SIS to perform repairs on EndoWrist 12:24:44

16 instruments? 12:24:48

17 A Yes, we did a lot of EndoWrists for 12:24:49

18 MarinHealth. 12:24:53

19 Q Over what period? 12:24:53

20 A I don't remember specifically, but I would 12:24:55

21 say 90 days-ish. 12:25:02

22 Q And how many instruments did you service 12:25:05

23 for MarinHealth? 12:25:07

24 A I would guess in the range of 50 to 60. 12:25:08

25 Q Did you have a signed agreement with Marin 12:25:15

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1 for that business? 12:25:21

2 A Not initially, no, it was kind of a trial, 12:25:21

3 we were doing a trial to make sure they liked it. 12:25:25

4 Q And you said "not initially." 12:25:28

5 Was there an agreement for that business 12:25:30

6 that you entered into with MarinHealth later? 12:25:32

7 A There would have absolutely been an 12:25:35

8 agreement in place until Intuitive shut us down. 12:25:37

9 Q If you would turn to the page ending 545, 12:25:40

10 there's an email in the middle of this page from you to 12:26:05

11 Mr. Ayers dated November 19, 2019. 12:26:07

12 A Okay. 12:26:16

13 Q And in the middle of that email, you say 12:26:16

14 (as read): 12:26:16

15 We are working with a large -- a 12:26:20

16 number of the largest health care 12:26:22

17 organizations in the U.S. 12:26:23

18 And then you list Banner Health, Kaiser 12:26:24

19 Permanente, Legacy Health, Advocate Aurora Health, and 12:26:28

20 Piedmont Healthcare. 12:26:32

21 As of November 2019, was SIS providing 12:26:33

22 services to any of those organizations relating to 12:26:37

23 EndoWrist instruments? 12:26:43

24 A All of them. 12:26:50

25 Q And, in response, on Monday, November 25, 12:26:51

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1 2019, Mr. Ayers wrote to you -- oh, I apologize, I was 12:27:06
2 looking at the wrong email. 12:27:16
3 If you would turn to page ending 544, I'm 12:27:18
4 looking at the email from Mr. Ayers on November 25, 12:27:22
5 2019, at 1:43 p.m. where he asks (as read): 12:27:26
6 Keith, how do the other hospitals 12:27:30
7 get past the Intuitive contract language 12:27:32
8 regarding proprietary instruments? 12:27:34
9 Do you see that question? 12:27:37
10 A What page was that again? 12:27:38
11 Q 544. 12:27:47
12 A Okay, yes, I see it. 12:27:50
13 Q And you responded in an email that same 12:27:53
14 day at 1:07 p.m. (as read): 12:27:57
15 Our service is, quote, repairing, 12:28:01
16 unquote, an Intuitive instrument. We are 12:28:04
17 not changing the instrument in any way 12:28:06
18 from its intended use or designed 12:28:09
19 functionality. 12:28:11
20 Do you see that statement? This is on 12:28:13
21 543. 12:28:19
22 A Okay. I was going the wrong direction. 12:28:20
23 Yes, I see it. 12:28:23
24 Q Okay. And what was the basis for your 12:28:24
25 statement that SIS was not changing the instrument in 12:28:27

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1 Q Did SIS ever facilitate any EndoWrist 12:34:41
2 repair services for Vizient members? 12:34:45

3 A Absolutely. 12:34:47

4 Q Which -- which Vizient members were those? 12:34:47

5 A Legacy, Legacy Health, Kaiser Permanente, 12:34:52
6 Piedmont, most of the our other big clients are 12:35:06
7 Premiere, they're not Vizient, so -- if you want -- if 12:35:20
8 you're asking me actual repairs done, I think those are 12:35:24
9 the three big ones. 12:35:28

10 MR. CHAPUT: Okay. So, Mr. Johnson, I 12:35:39
11 don't have any more questions at this point on the 12:35:41
12 30(b)(6) notice. We are going continue with your 12:35:42
13 deposition in your personal capacity, but we can go 12:35:45
14 ahead and take a break before we do that. 12:35:48

15 MR. SNYDER: Isaac, Josh Snyder, I do have 12:35:55
16 a few questions, very few, but I'm happy to save them 12:35:58
17 all till the end in the interest of efficiency. You 12:36:01
18 may cover them in the next part anyway. 12:36:06

19 MR. CHAPUT: Sure, that's fine, Josh. 12:36:08

20 MR. SNYDER: Thank you. 12:36:11

21 VIDEOGRAPHER PERAZA: This is the end of 12:36:12
22 today's deposition of SIS by Mr. Keith Johnson. We are 12:36:14
23 off the record at 12:36 p.m. 12:36:17

24 The total number of media used was four, 12:36:21
25 and will be retained by Veritext. 12:36:25

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EXHIBIT 4

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,) Case No.:
) 3:21-cv-03496-VC
Plaintiff,)
) Lead Case No.:
vs.) 3:21-cv-03825-VC
)
INTUITIVE SURGICAL, INC.,)
)
Defendant)
)
IN RE: DA VINCI SURGICAL ROBOT)
ANTITRUST LITIGATION)
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
)

*** CONFIDENTIAL ATTORNEYS EYES ONLY ***

30(b)(6) DEPOSITION OF:

KEITH ROBERT JOHNSON

THURSDAY, OCTOBER 27, 2022

9:06 a.m. Mountain Standard Time

REPORTED BY:
Vickie Blair
CSR No. 8940, RPR-CRR
JOB NO. 5539883
PAGES 1 - 122

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<p>1 Deposition of KEITH ROBERT JOHNSON, the witness, taken 2 on behalf of the Defendant, on Thursday, 3 October 27, 2022, 9:06 a.m. Mountain Standard Time, 4 before VICKIE BLAIR, CSR No. 8940, RPR-CRR. 5 6 APPEARANCES OF COUNSEL VIA ZOOM: 7 8 FOR PLAINTIFF/COUNTER-DEFENDANT SURGICAL INSTRUMENT 9 SERVICE CO. INC.: 10 11 HALEY GUILIANO LLP 12 BY JOSHUA VAN HOVEN, Partner 13 111 North Market Street, Suite 900 14 San Jose, California 95113 15 +1 669 213 1061 16 joshua.vanhoven@hglaw.com 17 18 FOR DEFENDANT INTUITIVE SURGICAL, INC.: 19 COVINGTON & BURLING LLP 20 BY ISAAC D. CHAPUT, Associate 21 415 Mission Street 22 Suite 5400 23 San Francisco, California 94105-2533 24 +1 415 591 7020 25 ichaput@cov.com 26 COVINGTON & BURLING LLP 27 BY AUSTIN S. MARTIN, Associate 28 One CityCenter 29 850 Tenth Street, NW 30 Washington, D.C. 20001-4956 31 +1 202 662 5094 32 amartin@cov.com</p>	<p>1 I N D E X 2 3 WITNESS EXAMINATION PAGE 4 KEITH ROBERT JOHNSON 5 (MR. CHAPUT) 7 6 7 8 INFORMATION REQUESTED 9 None 10 11 12 QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER 13 None 14 15 E X H I B I T S 16 EXHIBIT NO. PAGE DESCRIPTION 17 Exhibit 135 10 Defendant Intuitive Surgical, 18 Inc.'s Notice of Deposition of 19 Plaintiff Surgical Instrument 20 Service Company, Inc., Pursuant to 21 Fed. R. CIV. P. 30(b)(6) 22 Exhibit 136 57 Email chain with attachments, 23 Bates numbers SIS095115 through 24 SIS095139 25</p>
Page 2	Page 4
<p>1 APPEARANCES OF COUNSEL VIA ZOOM: (Continued) 2 FOR THE PROPOSED CLASS: 3 BONI, ZACK & SNYDER LLC 4 BY JOSHUA D. SNYDER, Partner 5 15 St. Asaphs Road 6 Bala Cynwyd, Pennsylvania 19004 7 (610) 822-0203 8 (610) 822-0206 9 jsnyder@bonizack.com 10 11 ALSO PRESENT: 12 RAMON A. PERAZA, Videographer 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 E X H I B I T S (Continued) 2 EXHIBIT NO. PAGE DESCRIPTION 3 Exhibit 137 86 Email with attachments, Bates 4 numbers SIS097139 through 5 SIS097187 6 Exhibit 138 100 Si EndoWrist Inspection and 7 Recovery Program, Bates number 8 SIS003937 9 Exhibit 139 106 Email, Bates number SIS096568 10 Exhibit 140 108 Email chain, Bates numbers 11 SIS000542 through SIS000547 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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1 the Rebotix EndoWrist repair business? 09:55:02	1 THE WITNESS: Not that I'm aware of. 09:58:37
2 A We had, I'm sure, some box -- some costs 09:55:06	2 BY MR. CHAPUT: 09:58:38
3 for boxes for shipping materials and things like that. 09:55:25	3 Q Does any aspect of SIS's relationship with 09:58:38
4 Q Anything else apart from boxes and 09:55:28	4 Benjamin Biomedical relate to robotic surgeries? 09:58:41
5 shipping materials? 09:55:32	5 A Not that I'm aware of. 09:58:51
6 A Not that I recall. 09:55:39	6 Q I'd like to focus next on Restore 09:58:53
7 Q So you mentioned a few times SIS's 09:55:40	7 Robotics, LLC. 09:59:04
8 long-standing business relationship with Benjamin 09:55:44	8 Does SIS currently have a business 09:59:05
9 Biomedical, so I'd like to turn next and talk a little 09:55:48	9 relationship with Restore? 09:59:07
10 bit about that company. 09:55:51	10 A Yes. 09:59:11
11 What -- what is the nature of SIS's 09:55:57	11 Q And what's the nature of that 09:59:11
12 relationship with Benjamin Biomedical? 09:56:03	12 relationship? 09:59:16
13 A We purchase a number of different items 09:56:07	13 A Our robotic program. 09:59:23
14 from them; they manufacture them for us. 09:56:11	14 Q What is your robotic program? 09:59:25
15 Q Does SIS ever outsource services to 09:56:13	15 MR. VAN HOVEN: Objection to form. 09:59:31
16 Benjamin Biomedical? 09:56:24	16 THE WITNESS: We currently are providing a 09:59:31
17 A Yes. 09:56:31	17 recovery program through Restore Robotics. 09:59:41
18 Q What types of services does SIS outsource 09:56:31	18 BY MR. CHAPUT: 09:59:45
19 to Benjamin Biomedical? 09:56:34	19 Q What is SIS's recovery program? 09:59:45
20 A The repair of Phaco handpieces and 09:56:35	20 A We're helping hospitals find dollars that 09:59:48
21 harmonic scalpels. 09:56:41	21 are being thrown away on robotic devices. 09:59:57
22 Q What are Phaco handpieces? 09:56:43	22 Q How do you do that? 10:00:01
23 A It is a medical device used in cataract 09:56:45	23 A We work with the hospitals to stop 10:00:04
24 surgery. 09:56:57	24 throwing away and disposing of EndoWrists. We collect 10:00:13
25 Q Does Benjamin Biomedical manufacturer -- 09:56:57	25 those EndoWrists for them, we test them, and help them 10:00:18
Page 38	Page 40
1 excuse me, does Benjamin Biomedical manufacture Phaco 09:57:03	1 understand that they've thrown away perfectly 10:00:23
2 handpieces and harmonic scalpels or are those 09:57:09	2 functioning EndoWrists, and we return those EndoWrists 10:00:27
3 manufactured by other companies? 09:57:12	3 back to the hospital so that they can collect and 10:00:30
4 MR. VAN HOVEN: Objection to form. 09:57:16	4 utili- -- and get that money that they've paid for 10:00:34
5 THE WITNESS: They are manufactured by 09:57:16	5 those devices that was not captured. 10:00:36
6 other companies. 09:57:18	6 Q Does any aspect of the recovery program 10:00:38
7 BY MR. CHAPUT: 09:57:19	7 involve circumventing the usage counter on the 10:00:47
8 Q Apart from repair of Phaco handpieces and 09:57:19	8 EndoWrist? 10:00:51
9 harmonic scalpels, does SIS outsource any other 09:57:25	9 A No. 10:00:52
10 services to Benjamin Biomedical? 09:57:31	10 Q Does SIS have the ability to check the 10:00:52
11 A Not that I'm aware of. 09:57:32	11 remaining lives on an EndoWrist without attaching it to 10:00:58
12 Q Does SIS have any relationship with 09:57:35	12 a da Vinci surgical system? 10:01:02
13 Benjamin Biomedical apart from purchasing devices 09:57:44	13 A Yes. 10:01:05
14 manufactured by Benjamin Biomedical and outsourcing the 09:57:47	14 Q How does SIS do that? 10:01:09
15 services we just discussed to Benjamin Biomedical? 09:57:50	15 A In a partnership with Restore Robotics, 10:01:11
16 MR. VAN HOVEN: Objection to form. 09:57:56	16 we've created a counter that allows us to test and 10:01:18
17 THE WITNESS: I'm sure there's some other 09:58:05	17 check those arms for remaining lives. 10:01:27
18 things they do for us, for SIS, on the repair side, I 09:58:07	18 Q You've mentioned that SIS is providing 10:01:29
19 just am not familiar with what they would be. 09:58:11	19 this recovery program through Restore Robotics. 10:01:32
20 BY MR. CHAPUT: 09:58:13	20 What did you mean by that? 10:01:35
21 Q Who would be familiar? 09:58:13	21 A Currently Restore Robotics is providing 10:01:36
22 A Greg Posdal. 09:58:15	22 the technical aspect of that service. 10:01:43
23 Q Does any aspect of Benjamin Biomedical's 09:58:18	23 Q What is the technical aspect of that 10:01:48
24 business relate to robotic surgeries? 09:58:29	24 service? Is that checking the lives or -- or is there 10:01:51
25 MR. VAN HOVEN: Object to form. 09:58:33	25 more involved in that? 10:01:54
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1 A They are doing the three steps, they are 10:01:58	1 testing process? 10:06:18
2 checking the EndoWrists for remaining lives, they were 10:02:01	2 A I'm not involved in the engineering and 10:06:18
3 function testing, and safety testing those devices. 10:02:04	3 the technical side of that, so what I'm personally 10:06:26
4 Q Prior to entering into this recovery 10:02:08	4 providing is more of a customer feedback, customer 10:06:29
5 program relationship with Restore, did SIS have any 10:02:18	5 thoughts, customer interest in that program, and what 10:06:35
6 previous relationship with Restore? 10:02:26	6 it would mean to health care. 10:06:38
7 A Yes. 10:02:35	7 Q Describe for me the customer feedback and 10:06:39
8 Q What was the previous relationship with 10:02:37	8 customer thoughts, customer interests in that program, 10:06:47
9 Restore? 10:02:40	9 please. 10:06:50
10 A We were involved with Restore in 10:02:40	10 A How much time do we have? 10:06:50
11 developing their repair program. 10:02:46	11 Q Describe it at a high level to start with, 10:06:54
12 Q What is Restore's repair program? 10:02:51	12 and we can -- 10:06:58
13 A Restore has the capability to extend the 10:03:05	13 A Since this program started, the interest 10:07:01
14 lives of EndoWrists on Si EndoWrists. 10:03:07	14 from the hospital is monumental, through the roof. 10:07:03
15 Q Does SIS play any role in offering that 10:03:15	15 The -- the interest in saving and reducing costs on 10:07:11
16 repair program to customers? 10:03:20	16 robotic surgery in the industry is something I've never 10:07:15
17 A Based on the practices, like we spoke 10:03:22	17 seen before in my 25 years of being in the surgical 10:07:17
18 about before, of Intuitive Surgical, we are no longer 10:03:34	18 business. 10:07:22
19 providing or offering the Si repair program in the 10:03:39	19 Q What hospitals have you spoken with about 10:07:23
20 United States. 10:03:42	20 the Xi program? 10:07:27
21 Q Was SIS previously offering an EndoWrist 10:03:42	21 A Would you like me to list them? 10:07:29
22 repair program in partnership with Restore? 10:03:50	22 Q Yes, please. 10:07:35
23 A Our relationship with Restore started 10:03:57	23 A This will be from the top of my head, so 10:07:36
24 after we had already stopped doing the repair program 10:04:03	24 I'll do the best I can, but well over -- the meetings 10:07:40
25 in the U.S. 10:04:05	25 that we've had represent well over a thousand 10:07:46
Page 42	Page 44
1 Q Does SIS have plans to work with Restore 10:04:06	1 hospitals, probably. 10:07:48
2 on a repair program in the future? 10:04:13	2 Facility level, I'll just start to kind of 10:07:53
3 A Yes. 10:04:15	3 name them off regionally. Legacy Health system in 10:07:56
4 Q Under what circumstances does SIS plan to 10:04:17	4 Portland, Oregon; Providence health system in the West 10:08:00
5 work with Restore program -- excuse me. 10:04:25	5 Coast; Sutter Health; Kaiser Permanente; memorial care; 10:08:04
6 Under what circumstances does SIS plan to 10:04:27	6 the UC system in California; Banner Health System; 10:08:16
7 work with Restore on a repair program in the future? 10:04:30	7 Honor Health; Baylor Scott & White in Texas; the 10:08:21
8 A We are working with Restore to develop a 10:04:34	8 university health systems across the country, from 10:08:31
9 repair program for the Xi instruments. 10:04:41	9 Michigan to Duke to North Carolina; Mayo Clinic; 10:08:35
10 Q Does SIS plan to work with Restore on a 10:04:45	10 Cleveland Clinic; Advocate Aurora; Lahey Health System; 10:08:50
11 repair program for Si instruments at any point in time? 10:04:50	11 Boston Children's Medical Center. 10:08:55
12 A Based on the current status of Si robots 10:05:04	12 I can't believe I'm remembering all this 10:08:57
13 in the United States, we don't see a huge value in 10:05:06	13 off the top of my head. 10:09:00
14 continuing that endeavor. 10:05:09	14 Piedmont health system, Grady in Atlanta, 10:09:02
15 Q And, when you say "the current status," 10:05:10	15 Johns Hopkins. 10:09:13
16 are you referring to the number of Si robots that are 10:05:18	16 That's the bulk of the direct hospitals 10:09:14
17 currently in service? 10:05:21	17 that I can recall having direct conversations with; 10:09:25
18 A Correct. 10:05:24	18 there's obviously much more than that. 10:09:27
19 Q What role does SIS play in developing a 10:05:24	19 And then, in addition to that, all the 10:09:29
20 repair program for Xi instruments with Restore? 10:05:38	20 Vizient conversations we've had, I've presented to all 10:09:33
21 A We are providing financial support in the 10:05:51	21 four regions of Vizient, which basically covers well 10:09:41
22 R&D, we are also providing help in the testing process, 10:05:53	22 over 2,000 hospitals in the United States. 10:09:45
23 bringing customer opinions and expertise to help in 10:06:07	23 Q Have you spoken with any of those 10:09:48
24 that process. 10:06:13	24 hospitals about the need for an EndoWrist repair 10:10:09
25 Q What sort of help is SIS providing in the 10:06:14	25 program to have FDA clearance? 10:10:11
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1 A I don't know if I understand what you're 10:10:20	1 specific date. I will say that we feel good about it, 10:13:51
2 asking me. 10:10:21	2 and we feel we are close. 10:13:54
3 Q Have any of those hospitals told you that 10:10:22	3 BY MR. CHAPUT: 10:13:55
4 they would be willing to purchase EndoWrist repair 10:10:29	4 Q And what does "close" mean from your 10:13:55
5 services that were not cleared by the FT -- FDA? 10:10:33	5 perspective? 10:13:57
6 MR. VAN HOVEN: Objection to form. 10:10:40	6 A Based off doing it for the Si, based off 10:14:04
7 MR. SNYDER: Objection to form. 10:10:42	7 what that time took and what it took to do it, we feel 10:14:11
8 THE WITNESS: So I've been in the repair 10:10:42	8 that we're close on developing that technology. 10:14:16
9 business for well over 20 years, repairs don't require 10:10:44	9 Q Right, but what -- my question is what 10:14:19
10 FDA clearance, and to my recollection, nobody in any of 10:10:49	10 does "close" mean to you? Does that mean within the 10:14:25
11 my conversations every brought up FDA clearance on the 10:10:58	11 next few months? Does that mean within the next few 10:14:31
12 repair. 10:11:01	12 years? 10:14:33
13 BY MR. CHAPUT: 10:11:02	13 A I don't know that I -- I don't know that I 10:14:34
14 Q Does the Xi -- maybe let's -- let's step 10:11:02	14 can answer that question, but I'll tell you I don't 10:14:37
15 back. 10:11:05	15 think it's years. 10:14:38
16 Does the Xi repair business that SIS is 10:11:06	16 Q You mentioned that this is based off doing 10:14:39
17 exploring with Restore involve extending the number of 10:11:12	17 it for the Si. 10:14:47
18 lives that an EndoWrist can be used for? 10:11:18	18 Was SIS involved in developing a -- an 10:14:48
19 A We are currently working on developing a 10:11:20	19 EndoWrist life extension program for Si instruments? 10:14:54
20 program to extend the life of Xi instruments. 10:11:31	20 A No. 10:15:05
21 Q And is that the program that you have 10:11:34	21 Q Apart from the Xi initiative you've 10:15:06
22 spoken with hospitals about? 10:11:36	22 described and the recovery business, does SIS have any 10:15:18
23 A The initial conversations we had with 10:11:47	23 other services or programs that it offers with Restore? 10:15:23
24 hospitals was around the repair program of Si. 10:11:49	24 A Outside of the EndoWrist programs, no. 10:15:31
25 We then went to our recovery program, 10:11:57	25 Q And those two EndoWrist programs that I 10:15:34
Page 46	Page 48
1 which does not extend the life of the device, and we 10:12:00	1 just mentioned, those are the only EndoWrist programs 10:15:41
2 have not talked about the Xi repair program because we 10:12:03	2 that SIS has with Restore? 10:15:44
3 do not have those capabilities as of today. 10:12:08	3 A And you're referring to the Si repair 10:15:46
4 Q So when you're describing the 10:12:10	4 program and the Xi recovery program? 10:15:49
5 conversations that you've had with that -- that long 10:12:12	5 Q So I thought that you had told me that 10:15:57
6 list of hospitals, were those conversations specific to 10:12:15	6 Si -- that SIS didn't have any involvement in Restore's 10:15:59
7 the Si repair program or the recovery program? 10:12:20	7 Si repair program, that it was only involved in the 10:16:02
8 A A little of both. Over the last 18 months 10:12:26	8 recovery program and the Xi program, so those are -- 10:16:05
9 or so, all the conversations are around recovery and, 10:12:31	9 A You're correct. 10:16:12
10 like we had said, before there's not a lot of Si robots 10:12:38	10 Q Okay. And so apart from the recovery 10:16:12
11 in the U.S., as you know, so that conversation is 10:12:42	11 program and the Xi program, is there anything else that 10:16:16
12 pretty much expired. 10:12:45	12 SIS is working on Restore with for EndoWrist 10:16:19
13 MR. VAN HOVEN: Counsel, we're at about a 10:13:00	13 instruments? 10:16:24
14 little over an hour, maybe a break in the -- now or the 10:13:03	14 A Not that I know of. 10:16:25
15 next a few minutes. 10:13:08	15 Q Does SIS have any written agreements with 10:16:32
16 MR. CHAPUT: Yeah, a few minutes we should 10:13:09	16 Restore? 10:16:36
17 be able to take one. 10:13:13	17 A We have an Si agreement with Restore, and 10:16:43
18 BY MR. CHAPUT: 10:13:14	18 we do not currently have a signed agreement for Xi with 10:16:49
19 Q So, Mr. Johnson, with respect to SIS's 10:13:19	19 Restore. 10:16:54
20 efforts with Restore to develop this Xi extended life 10:13:28	20 Q Is the Si agreement for the recovery 10:16:54
21 program, what is the timeline on that effort? When 10:13:32	21 program or something else? 10:17:00
22 does SIS expect for that to be available to provide to 10:13:37	22 A Let me step back for a second. 10:17:01
23 customers? 10:13:41	23 To my recollection, we have an -- we have 10:17:13
24 MR. VAN HOVEN: Objection to form. 10:13:43	24 an Si agreement -- this has been so long ago that this 10:17:18
25 THE WITNESS: I don't know that I have a 10:13:49	25 stuff was signed -- with Rebotix, and I do believe, to 10:17:23
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<p>1 my best recollection, we have an Si repair agreement 10:17:26</p> <p>2 with Restore, even though we haven't necessarily done 10:17:31</p> <p>3 any business with that program because of what we said 10:17:37</p> <p>4 before. 10:17:47</p> <p>5 MR. CHAPUT: We can go ahead and take a 10:17:47</p> <p>6 short break now. We can go off the record. 10:17:48</p> <p>7 VIDEOGRAPHER PERAZA: We are off the 10:17:52</p> <p>8 record at 10:17 a.m. 10:17:53</p> <p>9 (Recess taken.) 10:17:54</p> <p>10 VIDEOGRAPHER PERAZA: We are back on the 10:27:18</p> <p>11 record at 10:27 a.m. 10:27:23</p> <p>12 BY MR. CHAPUT: 10:27:26</p> <p>13 Q Mr. Johnson, focusing specifically on the 10:27:29</p> <p>14 EndoWrist recovery business, does SIS think that 10:27:33</p> <p>15 Intuitive has done anything to in any way hinder the 10:27:39</p> <p>16 EndoWrist recovery business? 10:27:44</p> <p>17 A My opinion is that Intuitive may not have 10:27:47</p> <p>18 specifically threatened the recovery business, but 10:27:59</p> <p>19 based on previous practices around the repair program, 10:28:04</p> <p>20 there definitely is some fear and hesitation from 10:28:11</p> <p>21 hospitals that Intuitive would retaliate and do some 10:28:14</p> <p>22 things, so, because of that, it sometimes makes those 10:28:18</p> <p>23 conversations difficult because of things that have 10:28:22</p> <p>24 happened previously. 10:28:27</p> <p>25 Q Has any hospital declined to use SIS's 10:28:28</p> <p style="text-align: right;">Page 50</p>	<p>1 A Do you mean hospitals that we actually 10:30:30</p> <p>2 generated revenue from by repairing instruments, is 10:30:35</p> <p>3 that what you're asking? 10:30:39</p> <p>4 Q Maybe I can -- I can make it a little more 10:30:40</p> <p>5 precise. 10:30:44</p> <p>6 For how many customers did SIS facilitate 10:30:44</p> <p>7 EndoWrist repairs in 2019? 10:30:47</p> <p>8 A From my recollection, I would say 10:31:12</p> <p>9 somewhere between 25 and 50. 10:31:19</p> <p>10 Q So the -- the number of customers who 10:31:30</p> <p>11 actually participated in that program is far less than 10:31:32</p> <p>12 the number of customers who -- who you are saying are 10:31:34</p> <p>13 afraid of retaliation from Intuitive around the 10:31:37</p> <p>14 recovery program; isn't that right? 10:31:40</p> <p>15 MR. VAN HOVEN: Objection to form. 10:31:42</p> <p>16 THE WITNESS: Can you phrase that again 10:31:53</p> <p>17 one time, I'm sorry? 10:31:54</p> <p>18 BY MR. CHAPUT: 10:31:55</p> <p>19 Q Sure. 10:31:56</p> <p>20 I'm trying to understand the number of 10:31:58</p> <p>21 customers who actually participated in SIS's EndoWrist 10:32:00</p> <p>22 repair program seems a lot smaller than the number of 10:32:04</p> <p>23 customers who you claim have been deterred from 10:32:08</p> <p>24 participating in the recovery program, and I just want 10:32:11</p> <p>25 to make sure I'm perceiving that difference correctly. 10:32:14</p> <p style="text-align: right;">Page 52</p>
<p>1 EndoWrist recovery business based on those fears or 10:28:36</p> <p>2 hesitations? 10:28:42</p> <p>3 A Yes. 10:28:42</p> <p>4 Q Which hospitals? 10:28:42</p> <p>5 A All of them. 10:28:43</p> <p>6 Q So -- 10:28:47</p> <p>7 A In -- in all honesty -- I take that back. 10:28:48</p> <p>8 We -- we have -- we probably have 30, 10:28:50</p> <p>9 30-ish hospitals right now fully engaged in the 10:29:02</p> <p>10 recovery program, but to answer your question 10:29:06</p> <p>11 specifically, over 95 percent of the conversations 10:29:09</p> <p>12 we've had, the reason they are not currently in that 10:29:11</p> <p>13 program is because of the fear of retaliation from 10:29:15</p> <p>14 in- -- from Intuitive. 10:29:21</p> <p>15 Q Has any customer expressed that opinion in 10:29:22</p> <p>16 an email or in writing in any way or are those only 10:29:35</p> <p>17 oral communications? 10:29:38</p> <p>18 A Both. I'm trying to remember some 10:29:50</p> <p>19 specific emails, but I -- there have been emails with 10:29:53</p> <p>20 customers saying that, because of contract restrictions 10:29:58</p> <p>21 or because of the fear of -- of Intuitive retaliating, 10:30:02</p> <p>22 they are -- they're not able to do the program. 10:30:10</p> <p>23 Q How many customers did SIS have who 10:30:13</p> <p>24 actually participated in the EndoWrist repair program 10:30:20</p> <p>25 back in 2019? 10:30:25</p> <p style="text-align: right;">Page 51</p>	<p>1 MR. VAN HOVEN: Objection to form. 10:32:20</p> <p>2 THE WITNESS: So when we started having 10:32:20</p> <p>3 conversations around the Si repair program, that had 10:32:23</p> <p>4 just got rolling, we started to have conversations, we 10:32:29</p> <p>5 got the Vizient contract in place, started having those 10:32:31</p> <p>6 conversations, and then people's and hospital's focuses 10:32:35</p> <p>7 went in other directions. 10:32:44</p> <p>8 As we got the -- the conversations back 10:32:47</p> <p>9 up, we just have a much broader reach, we're having 10:32:50</p> <p>10 much more conversations with people about this program, 10:32:52</p> <p>11 but if we still -- if there were still a good amount of 10:33:00</p> <p>12 Si robots in the United States, we would be having 10:33:04</p> <p>13 repair conversations about Si EndoWrists. 10:33:07</p> <p>14 BY MR. CHAPUT: 10:33:16</p> <p>15 Q So perhaps I can -- I can frame this 10:33:17</p> <p>16 question a little bit differently. 10:33:19</p> <p>17 Is it the case that many of the customers 10:33:21</p> <p>18 who have declined to participate in SIS's recovery 10:33:24</p> <p>19 program never sought out Si repair services from SIS? 10:33:30</p> <p>20 MR. VAN HOVEN: Objection to form. 10:33:36</p> <p>21 THE WITNESS: I don't think I agree with 10:33:46</p> <p>22 that statement because I think what I understand is 10:33:47</p> <p>23 there's some clauses in the Intuitive agreements that 10:33:49</p> <p>24 forbid hospitals from utilizing any companies to repair 10:33:52</p> <p>25 their instruments or devices. 10:33:56</p> <p style="text-align: right;">Page 53</p>

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1	So there were a number of original	10:34:01	1	Q -- any aspect of the MediVision	10:37:37
2	conversations that people would say, "We are not	10:34:04	2	relationship have anything to do with robotic assisted	10:37:40
3	allowed to repair our instruments, Intuitive does not	10:34:08	3	surgeries?	10:37:43
4	allow us to do that, even though we own the devices,	10:34:11	4	A No.	10:37:43
5	our contract does not allow us to repair them."	10:34:13	5	Q Okay. Does SIS have any business	10:37:43
6	So we were working through a lot of that	10:34:20	6	relationship with Clif Parker Robotics, LLC?	10:37:53
7	with legal and risk at a lot of these big	10:34:22	7	A Not that I know of.	10:38:00
8	organizations.	10:34:24	8	Q We've been talking about Restore Robotics.	10:38:07
9	The recovery program, people are willing	10:34:24	9	Does SIS have any relationship with	10:38:10
10	to talk about because it doesn't -- like, it doesn't	10:34:27	10	Restore Robotics Repairs, LLC?	10:38:12
11	affect -- it's not a repair.	10:34:31	11	A Not that I know of.	10:38:14
12	BY MR. CHAPUT:	10:34:42	12	Q So I'd like to move on to topic number	10:38:19
13	Q And even though the recovery program is	10:34:43	13	two, which is (as read):	10:38:32
14	not a repair, there are still customers who have	10:34:46	14	SIS's advertising, promotional,	10:38:34
15	decided not to use that program; is that -- is that	10:34:50	15	marketing, and other informational	10:38:36
16	correct? Am I understanding that correctly?	10:34:55	16	materials and communications relating to	10:38:38
17	A I would say that's correct.	10:34:57	17	the services, SIS markets, or performs on	10:38:41
18	Q Is SIS seeking damages for its recovery	10:35:07	18	or in connection with EndoWrist	10:38:43
19	program in this case?	10:35:15	19	instruments.	10:38:45
20	A I don't know the specifics of the damages,	10:35:26	20	And I'd like to mark as Exhibit 136 tab	10:38:48
21	but I would say that our interest is -- is the lack of	10:35:30	21	three, Austin, this is SIS095115, which is an email	10:38:55
22	business across all of our robotic programs against	10:35:36	22	dated September 25, 2019, from Keith Johnson, and this	10:39:04
23	Intuitive.	10:35:43	23	has four attachments to the email, as well.	10:39:10
24	Q Does SIS have any robotic programs, other	10:35:47	24	That should be available for you now on	10:39:41
25	than those that we've already discussed today?	10:35:53	25	Exhibit Share, Mr. Johnson.	10:39:44
Page 54			Page 56		
1	A No.	10:35:59	1	MR. VAN HOVEN: I don't see it.	10:39:45
2	Q Does SIS have any sort of business	10:35:59	2	THE WITNESS: I got it. It's up.	10:39:46
3	relationship with MediVision, Inc.?	10:36:09	3	MR. VAN HOVEN: Is it?	10:39:48
4	A We did.	10:36:15	4	(Deposition Exhibit 136 was marked	10:39:52
5	Q What was SIS's with MediVision?	10:36:16	5	for identification and is attached	10:39:52
6	A MediVision is owned -- the ownership of	10:36:20	6	hereto.)	10:39:52
7	MediVision is the same ownership of Restore, MediVision	10:36:31	7	BY MR. CHAPUT:	10:39:52
8	is a repair company, so they did some work for us on	10:36:35	8	Q Mr. Johnson, do you recognize Exhibit 136?	10:39:53
9	our core business on the repair of flexible and rigid	10:36:38	9	A Yes.	10:40:01
10	endoscopes.	10:36:43	10	Q And this is an email exchange between you	10:40:05
11	Q Did that work have anything to do with	10:36:44	11	and a number of folks from Banner Health; is that	10:40:08
12	da Vinci assisted surgeries?	10:36:50	12	right?	10:40:12
13	A Just to clarify, did our -- does our	10:36:59	13	A Yes.	10:40:12
14	MediVision relationship have anything to do a with	10:37:04	14	Q Is Banner Health an SIS customer?	10:40:12
15	robots?	10:37:06	15	A Yes.	10:40:19
16	Q Yes, I can make the question more clear.	10:37:06	16	Q Was Banner Health an SIS customer prior to	10:40:20
17	Did SIS's work with MediVision have	10:37:11	17	SIS starting its robotics business?	10:40:28
18	anything to do with robotic assisted surgeries?	10:37:14	18	A Yes.	10:40:30
19	A Outside of the relationship? I think, if	10:37:19	19	Q How long has SIS been working with Banner	10:40:30
20	I understand your question correctly, the answer would	10:37:23	20	Health?	10:40:39
21	be no.	10:37:25	21	A Over 20 years.	10:40:39
22	Q Right. So setting aside SIS's	10:37:25	22	Q If you would turn forward to the -- the	10:40:41
23	relationship with Restore, and it's just focused	10:37:31	23	third page of the document, this has the number in the	10:40:50
24	exclusively on MediVision --	10:37:35	24	bottom right-hand corner ending 117, there's an email	10:40:52
25	A Okay.	10:37:35	25	in the bottom of that page from Perry Kirwan to Timothy	10:40:55
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EXHIBIT 5

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**



Deposition of:
Greg Posdal

May 10, 2021

In the Matter of:
**Restore Robotics LLC v Intuitive
Surgical**

Veritext Legal Solutions

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Restore Robotics LLC v Intuitive Surgical

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RESTORE ROBOTICS LLC,)
RESTORE ROBOTICS REPAIRS)
LLC, and CLIF PARKER)
ROBOTICS LLC,)
Plaintiffs,)
vs.) CIVIL ACTION NO.
INTUITIVE SURGICAL, INC.,) 5:19-CV-55-TKW-MJF
Defendant.)
INTUITIVE SURGICAL, INC.,)
Counterclaimant,)
vs.)
RESTORE ROBOTICS LLC,)
RESTORE ROBOTICS REPAIRS)
LLC,)
Counterclaim Defendants.)

VIDEOTAPED DEPOSITION OF GREG POSDAL
(Taken by Defendant)
May 10, 2021
10:00 a.m.

Reported by: Debra M. Druzisky, CCR-B-1848

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2 On behalf of the Plaintiffs/Counterclaim</p> <p>3 Defendants:</p> <p>4 JEFFREY L. BERHOLD, Esq.</p> <p>5 Jeffrey L. Berhold, P.C.</p> <p>6 1230 Peachtree Street, Suite 1050</p> <p>7 Atlanta, Georgia 30309</p> <p>8 (404) 872-3080</p> <p>9 jeff@berhold.com</p> <p>10 On behalf of the Defendant/Counterclaimant:</p> <p>11 MICHAEL S. BAILEY, Esq.</p> <p>12 TAYLOR DOW, Esq.</p> <p>13 Skadden, Arps, Slate, Meagher & FLOm</p> <p>14 One Manhattan West</p> <p>15 New York, New York 10001</p> <p>16 (202) 371-7391</p> <p>17 michael.bailey@skadden.com</p> <p>18 On behalf of the Deponent:</p> <p>19 RICHARD T. MCCAULLEY, Esq.</p> <p>20 Haley Guiliano</p> <p>21 111 North Market Street, Suite 900</p> <p>22 San Jose, California 95113</p> <p>23 (669) 213-1050</p> <p>24 richard.mccauley@hglaw.com</p> <p>25 Also Present:</p> <p>Alan Pokotilow, videographer</p> <p>Chris McMillan, concierge</p> <p>--oOo--</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: We're on the</p> <p>2 record. The time is now 10:01 a.m. Today</p> <p>3 is Monday, May 10th of 2021. We're here</p> <p>4 today in Glendale Heights, Illinois at</p> <p>5 Surgical Instrument Service Company for</p> <p>6 the video recorded deposition of Greg</p> <p>7 Posdal in the matter of Restore Robotics,</p> <p>8 L.L.C.; Restore Robotics Repairs, L.L.C.;</p> <p>9 and Clif Parker Robotics, L.L.C., versus</p> <p>10 Intuitive Surgical, Incorporated;</p> <p>11 Intuitive Surgical, Incorporated as</p> <p>12 counterclaimant versus Restore Robotics,</p> <p>13 L.L.C. and Restore Robotics Repairs,</p> <p>14 L.L.C., Civil Case Number</p> <p>15 5:19-CV-55-TKW-MJF, to be heard before the</p> <p>16 United States District Court for the</p> <p>17 Northern District of Florida, Panama City</p> <p>18 Division.</p> <p>19 I'm Alan Pokotilow, a legal</p> <p>20 videographer, here today on behalf of</p> <p>21 Veritext Legal Solutions. Our court</p> <p>22 reporter today is Debra Druzisky, also</p> <p>23 here today on behalf of Veritext Legal</p> <p>24 Solutions.</p> <p>25 Will counsel please state your name</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX TO EXAMINATION</p> <p>2 Witness Name: Page</p> <p>3 GREG POSDAL</p> <p>4 By Mr. Berhold 5</p> <p>5 By Mr. Bailey 27</p> <p>6</p> <p>7</p> <p>8</p> <p>9 INDEX TO POSDAL EXHIBITS</p> <p>10 No. Description Page</p> <p>11 Exhibit 1 SIS 205 thru 208, Spreadsheet 7</p> <p>re: Instruments and sums.</p> <p>12</p> <p>13 Exhibit 2 SIS 47 thru 49, 9-15-19, 16</p> <p>Amendment to Agreement between</p> <p>14 Vizient Supply and Surgical</p> <p>Instrument Service Company.</p> <p>15 Exhibit 3 SIS 167, 11-14-18 thru 12-10-19, 25</p> <p>Spreadsheet re: Equipment</p> <p>16 serviced.</p> <p>17 Exhibit 4 SIS 35 thru 46, 8-22-19, E-mail 52</p> <p>from Chris Gibson to Greg Posdal</p> <p>18 re: Agreement, attached.</p> <p>19 Exhibit 5 Restore 58241 thru 248, 8-26-20, 55</p> <p>E-mail from Greg Posdal to Clif</p> <p>20 Parker re: Revised NDA attached.</p> <p>21 Exhibit 6 Restore 57179 thru 182, 9-14-20, 68</p> <p>E-mail from Clif Parker to Keith</p> <p>22 Johnson re: NDA attached.</p> <p>23 - - -</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 and affiliation for the record, after</p> <p>2 which our court reporter will swear the</p> <p>3 witness and we can proceed?</p> <p>4 MR. BERHOLD: Jeff Berhold for</p> <p>5 plaintiffs Restore Robotics, L.L.C.,</p> <p>6 Restore Robotics Repairs, L.L.C., and Clif</p> <p>7 Parker Robotics, L.L.C.</p> <p>8 THE CONCIERGE: Mr. Bailey, you're</p> <p>9 muted.</p> <p>10 MR. BAILEY: My apologies. My name</p> <p>11 is Michael Bailey. I am here on behalf of</p> <p>12 Intuitive Surgical, Inc. I'm here with my</p> <p>13 colleague Taylor Dow.</p> <p>14 MR. MCCAULLEY: Richard McCauley on</p> <p>15 behalf of the witness.</p> <p>16 GREG POSDAL,</p> <p>17 having been first duly sworn, was examined and</p> <p>18 testified as follows:</p> <p>19 EXAMINATION</p> <p>20 BY MR. BERHOLD:</p> <p>21 Q. Good morning, Mr. Posdal.</p> <p>22 A. Morning.</p> <p>23 Q. Are you currently employed?</p> <p>24 A. I am.</p> <p>25 Q. Where are you employed?</p>

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 14</p> <p>1 Q. Do you have any sense of the size of</p> <p>2 Vizient or the -- let me ask it a different way.</p> <p>3 Do you have a sense of how many members or</p> <p>4 how many -- do you have a sense of how many</p> <p>5 hospitals participate in the group purchasing</p> <p>6 organization at Vizient?</p> <p>7 A. I believe it's somewhere in the</p> <p>8 neighborhood of 2,500 acute care facilities. And</p> <p>9 that -- they have tens of thousands of group</p> <p>10 members, but a lot of them are not acute centers,</p> <p>11 so hos -- doctors' offices and a whole host of</p> <p>12 other things that don't touch on the services that</p> <p>13 we provide. So.</p> <p>14 But I think about 2,500 that would have</p> <p>15 the instrumentation and needs that would use our</p> <p>16 services.</p> <p>17 Q. Let me ask a different question. Let me</p> <p>18 go back. You testified earlier that you had</p> <p>19 entered a contracting relationship with a third</p> <p>20 party for the repair of da Vinci instruments; is</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. Who was that company?</p> <p>24 A. That was Rebotix, R-E-B-O-T-I-X.</p> <p>25 Q. And was there an agreement in place for</p>	<p style="text-align: right;">Page 16</p> <p>1 THE CONCIERGE: Sure. Please stand</p> <p>2 by.</p> <p>3 (Whereupon, Posdal Exhibit 2</p> <p>4 was marked for</p> <p>5 identification.)</p> <p>6 MR. MCCAULLEY: And Greg, I'll just</p> <p>7 note, maybe pause a heartbeat before you</p> <p>8 answer, give Mike a chance to interpose</p> <p>9 objections.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MR. MCCAULLEY: It just makes it very</p> <p>12 hard for Debra if we talk at the same</p> <p>13 time.</p> <p>14 THE WITNESS: Perfect.</p> <p>15 THE CONCIERGE: SIS 47 has been</p> <p>16 introduced as Posdal Exhibit 2 and is now</p> <p>17 on the screen.</p> <p>18 BY MR. BERHOLD:</p> <p>19 Q. Mr. Posdal, do you want to take a minute</p> <p>20 to review Exhibit 2?</p> <p>21 A. Sure. I'm aware of the agreement.</p> <p>22 Q. So you recognize Exhibit 2, Mr. Posdal?</p> <p>23 A. Yes.</p> <p>24 Q. And what is Exhibit 2?</p> <p>25 A. An agreement to work with Vizient and all</p>
<p style="text-align: right;">Page 15</p> <p>1 Rebotix to conduct the repairs of da Vinci</p> <p>2 instruments on behalf of S.I.S.?</p> <p>3 A. We had been working with them. There was</p> <p>4 no formally signed agreement. We were working on</p> <p>5 putting together the negotiation for pricing,</p> <p>6 et cetera, but were -- had already begun working</p> <p>7 with them on an agreed-on price list.</p> <p>8 Q. At some point did S.I.S. reach an</p> <p>9 agreement with Rebotix?</p> <p>10 A. Not a signed agreement. We had just</p> <p>11 started -- in terms of an agreement, we were</p> <p>12 working with them. So if that qualifies as</p> <p>13 reaching an agreement or understanding, then yes.</p> <p>14 Q. Okay. Now, at some point did S.I.S. enter</p> <p>15 discussions with Vizient about offering da Vinci</p> <p>16 instrument repair services to Vizient members?</p> <p>17 A. We did.</p> <p>18 MR. BAILEY: Objection to the form.</p> <p>19 BY MR. BERHOLD:</p> <p>20 Q. At some point did S.I.S. reach an</p> <p>21 agreement with Vizient?</p> <p>22 A. Yes.</p> <p>23 MR. BAILEY: Objection to the form.</p> <p>24 MR. BERHOLD: Chris, can we get SIS</p> <p>25 47, please?</p>	<p style="text-align: right;">Page 17</p> <p>1 of their hospitals -- all of their members,</p> <p>2 basically, but obviously it would be limited to</p> <p>3 those acute care facilities that I mentioned</p> <p>4 earlier, to provide them service for the da Vinci</p> <p>5 EndoWrist instrumentation.</p> <p>6 MR. BERHOLD: Chris, can we scroll to</p> <p>7 the last page?</p> <p>8 THE CONCIERGE: Sure.</p> <p>9 BY MR. BERHOLD:</p> <p>10 Q. And is that your signature on the last</p> <p>11 page of Exhibit 2?</p> <p>12 A. It is.</p> <p>13 Q. Did S.I.S. undertake any informal or</p> <p>14 formal analysis of the potential for sales under</p> <p>15 this agreement before signing the agreement?</p> <p>16 MR. BAILEY: Objection to the form.</p> <p>17 THE WITNESS: I guess informal. I</p> <p>18 mean, we knew that, especially with access</p> <p>19 and help and assistance of Vizient staff,</p> <p>20 that this could be a huge opportunity and</p> <p>21 undertaking for us here.</p> <p>22 The size and the scale of what was</p> <p>23 out there and the number of member</p> <p>24 hospitals and the excitement of everyone</p> <p>25 that we had spoken to with regard to these</p>

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<p style="text-align: right;">Page 18</p> <p>1 certainly pointed us in the direction of</p> <p>2 this being an enormous opportunity.</p> <p>3 BY MR. BERHOLD:</p> <p>4 Q. What did "huge" mean to you?</p> <p>5 A. Huge to us was tens of millions or even</p> <p>6 hundreds of millions of dollars over the course of</p> <p>7 probably just a couple of years.</p> <p>8 Q. Did S.I.S. also have conversations with</p> <p>9 specific hospital systems or hospital facilities</p> <p>10 about providing da Vinci instrument repair?</p> <p>11 MR. BAILEY: Objection to form.</p> <p>12 THE WITNESS: We did.</p> <p>13 BY MR. BERHOLD:</p> <p>14 Q. Do you recall the names of any of those</p> <p>15 hospitals or hospital systems?</p> <p>16 MR. BAILEY: Objection to form.</p> <p>17 THE WITNESS: I do.</p> <p>18 BY MR. BERHOLD:</p> <p>19 Q. And could you run through those names,</p> <p>20 Mr. Posdal?</p> <p>21 A. Off the top of my head, we spoke to Banner</p> <p>22 Health Systems; Kaiser; Legacy; Advocate Aurora, it</p> <p>23 was just Advocate at the time, but now it's</p> <p>24 Advocate Aurora; Marin General; I mean, and then</p> <p>25 probably some more that I'm not thinking of right</p>	<p style="text-align: right;">Page 20</p> <p>1 BY MR. BERHOLD:</p> <p>2 Q. Do you recall what any of the customers</p> <p>3 said was specifically a concern coming from</p> <p>4 Intuitive?</p> <p>5 A. Yes. I'll -- their main concerns were</p> <p>6 that Intuitive had sent letters -- it was a</p> <p>7 combination, that their representatives were saying</p> <p>8 to them specifically that they should be not --</p> <p>9 should not be using a third party to repair the</p> <p>10 instruments, that there is specific language in</p> <p>11 their agreements that prohibit them sending any of</p> <p>12 these instruments out to third parties for repair,</p> <p>13 and that there was the threat that they would stop</p> <p>14 selling them new equipment or servicing the</p> <p>15 existing robotics for these pieces of equipment.</p> <p>16 Q. Do you personally recall hearing from any</p> <p>17 of your hospital customers that Intuitive referred</p> <p>18 to contractual restrictions?</p> <p>19 MR. BAILEY: Objection to --</p> <p>20 THE WITNESS: I --</p> <p>21 MR. BAILEY: -- form.</p> <p>22 THE WITNESS: I did not have those</p> <p>23 conversations personally. Again, that</p> <p>24 would be a Keith Johnson question.</p> <p>25 But I was privy to the E-mails going</p>
<p style="text-align: right;">Page 19</p> <p>1 now, but.</p> <p>2 And Keith Johnson had most of those</p> <p>3 conversations. He could probably fill in whoever</p> <p>4 else he had talked to regarding Intuitive repair.</p> <p>5 Q. So what happened with this huge business</p> <p>6 opportunity for S.I.S.?</p> <p>7 MR. BAILEY: Objection to form.</p> <p>8 THE WITNESS: It started very well,</p> <p>9 and it was very well received at all the</p> <p>10 places that we had contacted.</p> <p>11 Most had actually given us</p> <p>12 instruments, and we had actually gone</p> <p>13 through the process and reprogrammed and</p> <p>14 sent these instruments back to these</p> <p>15 facilities, a handful, probably 30 or 40.</p> <p>16 I think there's a form in evidence here</p> <p>17 that kind of explains who we did that</p> <p>18 service to.</p> <p>19 But either it was quickly put down,</p> <p>20 or before we even got started the</p> <p>21 customers said they were concerned about</p> <p>22 moving forward because of what they were</p> <p>23 told by Intuitive about using third</p> <p>24 parties for repairing or having any other</p> <p>25 effect on their instruments.</p>	<p style="text-align: right;">Page 21</p> <p>1 back and forth with notes directed at</p> <p>2 that, specifically from the customers</p> <p>3 saying, yeah, Intuitive gave us a letter,</p> <p>4 the hospital is spooked by this, and</p> <p>5 they're not sure if they can move on</p> <p>6 regardless of whether they wanted to or</p> <p>7 not.</p> <p>8 BY MR. BERHOLD:</p> <p>9 Q. How unusual is it for S.I.S. to see those</p> <p>10 kinds of communications from original equipment</p> <p>11 manufacturers regarding third-party service?</p> <p>12 MR. BAILEY: Objection to form.</p> <p>13 THE WITNESS: It's unusual now, but</p> <p>14 historically not. We've been through it</p> <p>15 before with other manufacturers of rigid</p> <p>16 endoscopes, flexible endoscopes,</p> <p>17 et cetera.</p> <p>18 It's kind of been a time tested way</p> <p>19 of the manufacturing kind of -- the</p> <p>20 manufacturer steering their customers away</p> <p>21 from third parties. But it's largely died</p> <p>22 down because it's such an accepted</p> <p>23 practice in our -- across our field.</p> <p>24 BY MR. BERHOLD:</p> <p>25 Q. Mr. Posdal, did you observe any difference</p>

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<p style="text-align: right;">Page 22</p> <p>1 in the -- well, let me think for a second.</p> <p>2 Mr. Posdal, did you notice any -- did you</p> <p>3 observe any difference in the ability of Intuitive</p> <p>4 to persuade its customers to stop using third-party</p> <p>5 service compared with prior experiences with</p> <p>6 original equipment manufacturers?</p> <p>7 MR. BAILEY: Objection to form.</p> <p>8 THE WITNESS: I did. Should I expand</p> <p>9 on that?</p> <p>10 BY MR. BERHOLD:</p> <p>11 Q. Please do.</p> <p>12 A. Historically, with just about any other</p> <p>13 piece of equipment, whether it's stainless steel</p> <p>14 instrumentation or rigid endoscopes or flexible</p> <p>15 endoscopes or video equipment, any of the items</p> <p>16 that we'd worked with prior to this, the customer</p> <p>17 always had a choice. They could switch</p> <p>18 manufacturers.</p> <p>19 For the most part, things like rigid</p> <p>20 endoscopes are interchangeable. They do have some</p> <p>21 specific ancillary equipment and locking systems</p> <p>22 that you need to mate up, but the customer could</p> <p>23 always say, look, I'll just, I'll change from</p> <p>24 Stryker to Storz or Storz to Wolf if you're going</p> <p>25 to give me this -- if you're going to, you know,</p>	<p style="text-align: right;">Page 24</p> <p>1 where they may no longer have been able to</p> <p>2 provide robotic surgeries for their</p> <p>3 patients.</p> <p>4 So we never stopped offering it, but</p> <p>5 we were kind of trying to work through the</p> <p>6 process with our customers to see if we</p> <p>7 can get by those threats, real and</p> <p>8 implied, from Intuitive.</p> <p>9 MR. BERHOLD: Chris, you can take</p> <p>10 down Exhibit 2, please.</p> <p>11 Thank you.</p> <p>12 BY MR. BERHOLD:</p> <p>13 Q. And Mr. Posdal, do you have any prior</p> <p>14 experience in observing what happens to pricing for</p> <p>15 the original equipment when third parties begin to</p> <p>16 repair those devices?</p> <p>17 A. Sure.</p> <p>18 MR. BAILEY: Objection to form.</p> <p>19 THE WITNESS: Sorry. I didn't wait.</p> <p>20 Yes.</p> <p>21 BY MR. BERHOLD:</p> <p>22 Q. What's been your experience in that regard</p> <p>23 as far as the effect of third-party servicing on</p> <p>24 the pricing of the new instrument or device?</p> <p>25 MR. BAILEY: Continuing objection to</p>
<p style="text-align: right;">Page 23</p> <p>1 push this.</p> <p>2 With Intuitive and the EndoWrist it's</p> <p>3 different, obviously, because they attach to the</p> <p>4 robot, and the customer simply has no choice but to</p> <p>5 continue -- let me rephrase that.</p> <p>6 The threats are that either Intuitive</p> <p>7 would stop selling them the instrumentation they</p> <p>8 need, the additional instrumentation, or that they</p> <p>9 could possibly and potentially stop servicing their</p> <p>10 robot systems themselves, which would obviously</p> <p>11 shut down the robotics program at that facility.</p> <p>12 There just simply aren't any other options.</p> <p>13 Q. At some point did S.I.S. stop offering</p> <p>14 repair services for the da Vinci instruments?</p> <p>15 MR. BAILEY: Objection to form.</p> <p>16 THE WITNESS: We never stopped</p> <p>17 offering, but we were waiting for this</p> <p>18 potentially to play itself out, for some</p> <p>19 hospital to step forward and really push</p> <p>20 the issue with Intuitive.</p> <p>21 And there were several, not customers</p> <p>22 of ours, but several that did push it and</p> <p>23 got their service cut off. And so we are</p> <p>24 cognizant and aware of that and didn't</p> <p>25 want to put our customers in a position</p>	<p style="text-align: right;">Page 25</p> <p>1 this line of questioning based upon the</p> <p>2 original improper questioning. Objection</p> <p>3 to form.</p> <p>4 THE WITNESS: Typical of any</p> <p>5 industry, the pricing generally decreases</p> <p>6 over time with more competition.</p> <p>7 BY MR. BERHOLD:</p> <p>8 Q. Let me check real quick to see if I need</p> <p>9 to introduce one more exhibit.</p> <p>10 MR. BERHOLD: Chris, can we introduce</p> <p>11 SIS 167, please?</p> <p>12 THE CONCIERGE: Sure. Please stand</p> <p>13 by.</p> <p>14 (Whereupon, Posdal Exhibit 3</p> <p>15 was marked for</p> <p>16 identification.)</p> <p>17 THE CONCIERGE: SIS 167 has been</p> <p>18 introduced as Posdal Exhibit 3 and is now</p> <p>19 on the screen. And I can rotate this page</p> <p>20 if need be.</p> <p>21 MR. BERHOLD: Sure. Let's do that</p> <p>22 and make it easier on everyone. And is it</p> <p>23 possible to zoom?</p> <p>24 BY MR. BERHOLD:</p> <p>25 Q. Mr. Posdal, do you recognize Exhibit 3?</p>

EXHIBIT 6

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4 REBOTIX REPAIR LLC,

5 Plaintiff,

6 vs.

7 INTUITIVE SURGICAL, INC.,

8 Defendant.

)
)
)
)
) Case No.
) 8:20-cv-02274
)
)
)
)

11 VIDEO DEPOSITION OF PULLMAN REGIONAL HOSPITAL

12 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE

13 EDWARD W. HARRICH

14 MAY 24, 2021

15 CONDUCTED REMOTELY VIA VIDEOCONFERENCE

23 Reported by Cynthia J. Vega

24 RMR, RDR, CA CSR 6640, WA CSR 21001436, CCRR 95

25 Job No. 194419

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 May 24, 2021</p> <p>5 10:11 a.m. Pacific Daylight Time</p> <p>6</p> <p>7</p> <p>8</p> <p>9 The remote video deposition of Pullman</p> <p>10 Regional Hospital through its designated</p> <p>11 representative Edward W. Harrich, a Witness herein,</p> <p>12 located in the City of Pullman, State of Washington,</p> <p>13 taken on behalf of Plaintiff, reported remotely before</p> <p>14 Cynthia J. Vega, California Certified Shorthand</p> <p>15 Reporter 6640, Washington Certified Shorthand Reporter</p> <p>16 21001436, Registered Merit Reporter, Registered</p> <p>17 Diplomat Reporter, California Certified Realtime</p> <p>18 Reporter 95, located in the City of Carlsbad, County</p> <p>19 of San Diego, State of California.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 REMOTE APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 DOVEL & LUNER</p> <p>4 By: Richard Lyon, III, Esq.</p> <p>5 201 Santa Monica Boulevard</p> <p>6 Santa Monica, California 90401</p> <p>7</p> <p>8</p> <p>9</p> <p>10 For the Defendant:</p> <p>11 SKADDEN, ARPS, SLATE, MEAGHER & FLOM</p> <p>12 By: Michael Menitove, Esq.</p> <p>13 Griff Almy, Esq.</p> <p>14 One Manhattan West</p> <p>15 New York, New York 10001</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 For Pullman Regional Hospital and the Witness:</p> <p>21 IRWIN, MYKLEBUST, SAVAGE & BROWN</p> <p>22 By: Robert Rembert, Esq.</p> <p>23 1230 SE Bishop Boulevard</p> <p>24 Pullman, Washington 99163</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 Also in Attendance:</p> <p>2 Naomi Caldwell</p> <p>3</p> <p>4 The Videographer:</p> <p>5 Manuel Garcia</p> <p>6</p> <p>7 * * * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX</p> <p>2 WITNESS</p> <p>3 Edward W. Harrich</p> <p>4</p> <p>5 EXAMINATION PAGE</p> <p>6 By Mr. Lyon 9</p> <p>7 By Mr. Menitove 90</p> <p>8 By Mr. Lyon 186</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 PLAINTIFF'S DESCRIPTION PAGE</p> <p>13 Exhibit 1 Pullman Regional Hospital Website 17</p> <p>14 Printout</p> <p>15 Exhibit 2 Email chain, August 6, 2019 64</p> <p>16 Exhibit 3 Savings Spreadsheet, Yearly 66</p> <p>17 Breakdown Chart</p> <p>18 Exhibit 4 Email, August 15, 2019 69</p> <p>19 Exhibit 5 Email chain, June and August 2019 73</p> <p>20 Exhibit 6 Letter to Scott Adams, CEO, from 74</p> <p>21 Intuitive, September 9, 2019</p> <p>22 Exhibit 7 Email, September 13, 2019, with 78</p> <p>23 attachment</p> <p>24 Exhibit 8 Email, September 16, 2019 80</p> <p>25 Exhibit 9 Email chain, October 18, 2019 84</p>

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1 this area.

2 Q. Based on the hospitals you know, it is
3 standard procedure to repair and reuse traditional
4 laparoscopic devices that are similar to the EndoWrist
5 used in da Vinci surgeries; is that right?

6 MR. MENITOVE: Object to the form.

7 THE WITNESS: That's correct.

8 BY MR. LYON:

9 Q. Are you familiar with Rebotix Repair?

10 A. Yes.

11 Q. When did you first learn of Rebotix Repair?

12 A. Probably about two years ago.

13 Q. And how did you learn of Rebotix Repair?

14 A. A rep for Rebotix gave me a call, told me
15 about Rebotix, asked if he could set up a meeting. I
16 scheduled a meeting with him. We sat down and chatted
17 for a couple of hours and then proceeded forward from
18 there.

19 Q. When you first learned that there was a
20 company performing repairs for EndoWrists, what was
21 your reaction?

22 A. I was pleased.

23 Q. Why?

24 A. Well, for years, I thought the robot -- the
25 robotic instrument arms had additional lives on them,

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1 But it's grabbing the tissue. They're liking
2 what they're seeing. They're liking what they're
3 feeling. So the instrument can still continue to be
4 used.

5 Q. Is that how you determine whether a
6 traditional laparoscopic device should continue to be
7 used as well?

8 A. Yes, the functionality of it.

9 Q. Is your hospital aware of any other companies
10 other than Rebotix Repair that repairs and services
11 EndoWrists?

12 A. I'm not aware of anybody else.

13 Q. Is your hospital aware of any companies other
14 than Rebotix Repair that can reset the usage counter
15 on EndoWrists beyond the limit imposed by Intuitive?

16 A. I'm not aware of anybody else.

17 Q. Would your hospital have agreed to use
18 EndoWrists repaired by Rebotix if the repaired
19 EndoWrists were unsafe?

20 A. No, never.

21 MR. MENITOVE: Object to the form.

22 BY MR. LYON:

23 Q. Did you do any testing or trials of
24 Rebotix-repaired EndoWrists?

25 A. We did.

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1 other than they have a chip on them that only allow
2 you ten uses. At the end of the tenth use, it becomes
3 a disposable. I was glad to see that we could stop
4 after nine uses --

5 (Reporter clarification.)

6 A. So I was pleased to see that we could use the
7 instruments for a longer duration and have them
8 reprogrammed with a cost savings.

9 Q. You stated that you believed EndoWrists had
10 additional lives on them before you had to dispose of
11 them when they reached their maximum use restrictions;
12 is that right?

13 A. That's correct.

14 Q. Why did you believe that EndoWrists had
15 additional lives on them?

16 A. Well, on the end of the tenth life, it wasn't
17 working any different than it had been on the first
18 life. There was no complaints by the physicians. If
19 there were any, we'd take the instrument out of
20 service or send it back in to Intuitive for repair if
21 it still had lives left on it.

22 So if it's a grasper, it's a grasper. Is it
23 grabbing the tissue like you think it should? As the
24 physician says, it's feeling that tactile touch. You
25 can't actually feel the touch, but on a console.

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1 Q. What did you do to test or try out
2 Rebotix-repaired EndoWrists?

3 A. We had three or four samples that we were
4 given by Rebotix, and informed the physician that it
5 was a reprocessed robotic instrument for the cases,
6 made everybody in the room aware that it was a
7 reprocessed instrument, and gave it a whirl.

8 There were no complaints. Everybody said
9 they worked just fine. There was no difference than
10 the non-reprocessed instruments. So we did -- we made
11 some purchases. And then when we made our first
12 purchases -- you had to get down to one life left
13 before you could send them in. So once we got some
14 instruments and we were able to send them in, got them
15 back from Rebotix.

16 Myself and my assistant director, Steve
17 Cromer, the only two that knew that those were the
18 reprocessed instruments that came back in, we used
19 them in a case. I asked the first assist, the
20 surgeon, and the scrub tech in the room if there were
21 any issues, complications, or problems about the
22 instruments, and there were no issues. They --
23 actually, one of them on one of the cases says the
24 scissors seemed extremely sharp.

25 So we didn't have any issues and we were

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1 going to continue to proceed forward using them.
 2 Q. There is a lot there. I'm going to try to --
 3 A. Yes.
 4 Q. -- break down and unpackage that as well.
 5 When you tested out the EndoWrists, was it
 6 during an actual surgery with a patient?
 7 A. Yes.
 8 Q. In the -- withdrawn.
 9 Were the surgeons who used the
 10 Rebotix-repaired EndoWrists able to discern any
 11 difference between those EndoWrists and EndoWrists
 12 that had not been repaired or serviced by Rebotix?
 13 A. No.
 14 MR. MENITOVE: Objection. Foundation.
 15 BY MR. LYON:
 16 Q. Were the first assists able to discern any
 17 differences between the Rebotix-repaired EndoWrists
 18 and the EndoWrists that had not been repaired or
 19 serviced by Rebotix?
 20 MR. MENITOVE: Same objection.
 21 THE WITNESS: No.
 22 BY MR. LYON:
 23 Q. Were the scrub assists able to discern any
 24 difference between the Rebotix-repaired EndoWrists and
 25 EndoWrists that had not been repaired or serviced by

Page 40

1 withdrawn.
 2 Did you personally interview the surgeons and
 3 the technicians who were involved in the trial of the
 4 Rebotix-repaired EndoWrists?
 5 A. Yes.
 6 Q. What did you learn from those interviews?
 7 A. That the instruments still worked just like
 8 the nonrepaired ones. There was no difference.
 9 Q. Does your hospital undertake any inspection
 10 efforts of an EndoWrist before it's used in a surgery?
 11 A. Absolutely.
 12 Q. What process does your hospital undertake to
 13 inspect an EndoWrist from Intuitive before it's used
 14 in a surgery?
 15 A. So the inspection process will start in
 16 central sterile processing. There is multiple steps
 17 on processing and packaging those instrumentations,
 18 protecting the tips on them.
 19 Once they're packaged, sent through sterile
 20 processing, they come into the room. The scrub tech,
 21 when they open the trays, will examine them on the
 22 field, make sure that the jaws are open and close,
 23 that the -- you know, everything is clean, that there
 24 is no dried blood, that the ports are working.
 25 And then the first assist will do that also.

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1 Rebotix?
 2 MR. MENITOVE: Same objection.
 3 THE WITNESS: No.
 4 BY MR. LYON:
 5 Q. Other than the first assists, the surgeons,
 6 and the scrub assists, did anyone else test or
 7 perceive the Rebotix-repaired EndoWrists in use?
 8 MR. MENITOVE: Object to the form.
 9 THE WITNESS: No.
 10 BY MR. LYON:
 11 Q. What is a first assist?
 12 A. A first assist is the surgeon's assistant.
 13 They stay at the patient's bedside the entire time
 14 when the surgeon goes to the console. The first
 15 assist will help guide the instruments in, use the
 16 suction, an extra set of hands. They have their own
 17 laparoscopic equipment.
 18 Q. What is a scrub assist?
 19 A. Scrub assist is -- they will be responsible
 20 for the instrumentations, loading the clips, or
 21 handing the instruments off to the first assist and
 22 load it in the da Vinci. The scrub may also load the
 23 instrument themselves.
 24 Q. Did you personally interview the surgeons and
 25 the technicians who were involved in the surgery --

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1 Q. Are traditional laparoscopic instruments used
 2 in nonrobotic surgeries inspected in the same way as
 3 the EndoWrists are?
 4 A. Yeah, there is a little bit of different
 5 process. Some of the robotic instruments are a little
 6 bit more complicated with their flushing ports or how
 7 they're loaded, but, yes, all of our instruments are
 8 inspected.
 9 Q. Do the EndoWrists sometimes fail the
 10 inspection?
 11 A. Yes.
 12 Q. Does Pullman Regional sometimes use
 13 EndoWrists for less than a maximum number of uses?
 14 A. Yes.
 15 Q. Do EndoWrists sometimes fail before they
 16 reach their maximum usage limit?
 17 A. Yes.
 18 Q. What are some of the ways an EndoWrist might
 19 fail before it reaches its maximum number of uses?
 20 A. So -- okay. So they -- the teeth might
 21 misalign. They'll get shifted so that they don't
 22 close completely lined up. They'll get a little bit
 23 offset.
 24 The -- there is like wires, the bands. They
 25 fray, so there may be a frayed wire on them.

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1 They roll on a roller, a track, and that
2 track may get chipped or the wire may come over the
3 top of the roller. It's like a pulley. Or the
4 scissors are dull and so they'll gnaw through the
5 tissue instead of making a clean cut.

6 Q. Has your hospital ever rejected an EndoWrist
7 because the surgeon perceived it to have dull or
8 damaged scissor plates?

9 A. Yes.

10 Q. Has your hospital ever rejected an EndoWrist
11 because a surgeon perceived it to have unintuitive
12 motion?

13 A. Yes.

14 Q. Has your hospital ever rejected an EndoWrist
15 because a surgeon perceived it to have insufficient
16 grip force?

17 A. Yes.

18 Q. Has your hospital ever rejected an EndoWrist
19 because the wires were frayed?

20 A. Yes.

21 Q. In any of these instances where you rejected
22 an EndoWrist, for example, for unintuitive motion,
23 dull or damaged scissors, insufficient grip force, or
24 any other reason, had the EndoWrist been used beyond
25 the maximum number of uses imposed by Intuitive?

Page 44

1 experiencing problems like that -- I think only once
2 we've had it where actually the teeth on a grasper
3 were locked on some tissue. But prior to that, other
4 than that one incident, no. If the instrument is not
5 operating as it is supposed to, it's taken out and
6 it's replaced.

7 BY MR. LYON:

8 Q. When an EndoWrist is not performing properly,
9 for example -- withdrawn.

10 If an EndoWrist is not performing properly,
11 for example, it's showing unintuitive motion,
12 insufficient grip force, or dull blades, is it your
13 hospital's practice to simply replace that EndoWrist?

14 A. Yes.

15 Q. Similarly, if a traditional nonrobotic
16 laparoscopic instrument is not performing properly, is
17 it your hospital's practice to simply replace that
18 instrument?

19 A. Yes.

20 Q. Are traditional, nonrobotic laparoscopic
21 instruments also sometimes rejected by surgeons?

22 A. Yes.

23 Q. Are traditional, nonrobotic laparoscopic
24 instruments sometimes rejected by surgeons because of
25 dull or damaged scissor blades?

Page 43

1 A. No.

2 Q. Had any of these rejected EndoWrists been
3 serviced by Rebotix?

4 A. No.

5 Q. Did your hospital or your surgeons ever
6 reject a Rebotix-repaired EndoWrist because of
7 perceived unintuitive motion?

8 A. No.

9 Q. Did your hospital or surgeons ever reject a
10 Rebotix-repaired EndoWrist because of perceived dull
11 or damaged scissor blades?

12 A. No.

13 Q. Did your hospital or your surgeons ever
14 reject a Rebotix-repaired EndoWrist because of
15 insufficient grip force?

16 A. No.

17 Q. Did your hospital or surgeons ever reject a
18 Rebotix-repaired EndoWrist for any reason?

19 A. No.

20 Q. In the instances where one of Intuitive's
21 EndoWrists did not perform properly, for example,
22 unintuitive motion, insufficient grip force, or dull
23 blades, was the patient's safety put at risk?

24 MR. MENITOVE: Object to the form.

25 THE WITNESS: No. We -- when we're

Page 45

1 A. Yes.

2 Q. Are traditional, nonrobotic laparoscopic
3 instruments sometimes rejected by surgeons because of
4 insufficient grip force?

5 A. Yes.

6 Q. Are traditional, nonrobotic laparoscopic
7 instruments sometimes rejected by surgeons because of
8 unintuitive motion?

9 A. Yes.

10 Q. When a traditional instrument is rejected,
11 does your hospital repair or hire a service to repair
12 the instrument?

13 A. I do have a company that comes in, and we'll
14 put them aside. If you're talking on a laparoscopic
15 instrument, most of the time he can do the repairs
16 on-site. Sometimes we'll have to send it out to his
17 repair facility.

18 Q. Can you sharpen the scissors of a traditional
19 laparoscopic device if they're dull?

20 A. Yes.

21 MR. MENITOVE: Object to the form.

22 BY MR. LYON:

23 Q. Are you permitted to sharpen the scissors of
24 an EndoWrist if they're dull?

25 MR. MENITOVE: Object to the form.

EXHIBIT 7

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

From: Woody Groves [Woody.Groves@intusurg.com]
Sent: 9/14/2019 9:22:33 AM
To: Matt Heick [Matt.Heick@intusurg.com]
CC: AJ Inacay [aj.inacay@intusurg.com]; Jennifer Scott [Jennifer.scott@intusurg.com]
Subject: Re: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Thanks Matt. AJ, call me on Monday if you get a minute.

Sent from my iPhone
Woody Groves

On Sep 14, 2019, at 10:14 AM, Matt Heick <Matt.Heick@intusurg.com> wrote:

AJ,

Can you provide my team with assistance on dealing with SIS. They are attempting to reprocess instruments at UF Shands.

Thank you,

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive
Peachtree Corners, GA 30092

<image002.jpg>

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 6:09 PM
To: Matt Heick <Matt.Heick@intusurg.com>
Subject: Re: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Thanks Matt. Who do I need to talk to? I'm on vacation next week.

Sent from my iPhone
Woody Groves

On Sep 13, 2019, at 5:46 PM, Matt Heick <Matt.Heick@intusurg.com> wrote:

Woody,

Thanks for brining to my attention. We have a formal internal process for these situations. Let me know if you have further issues after connecting with our internal folks or if you see this surface in other accounts.

This would void their current warranty and creates patient safety issues. Happy to discuss next week upon my return from vacation...

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive
Peachtree Corners, GA 30092

<image003.jpg>

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 8:04 AM
To: Anna Samples <Anna.Samples@intusurg.com>; Jennifer Scott <Jennifer.scott@intusurg.com>; Matt Heick <Matt.Heick@intusurg.com>
Subject: Fwd: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

FYI. I'm researching our answer and response now.

Sent from my iPhone
Woody Groves

Begin forwarded message:

From: "Watkins, Dawn E." <WATKID@shands.ufl.edu>
Date: September 12, 2019 at 6:25:19 PM EDT
To: Woody Groves <Woody.Groves@intusurg.com>
Cc: "Wigglesworth, Susan J." <wiggjsj@shands.ufl.edu>
Subject: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Hi Woody,

Who needs a sales force when you're on a GPO contract? ☺

Can you help us confirm if the use of a refurbished EndoWrist would have a negative impact on our warranty?

A quick response would be great. At this rate, we'll be asked again by Monday.

Best regards,
Dawn

Dawn Watkins, MBA, CMRP
Director of Strategic Sourcing
UF Health Shands
watkid@shands.ufl.edu
Cell: 352-246-2500

From: Cassidy,Manuela <manuela.cassidy@vizientinc.com>
Sent: Thursday, September 12, 2019 4:37 PM
To: Carroll-Mazeli, Andy <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggjsj@shands.ufl.edu>
Cc: Alltop, Shirley <alltos@shands.ufl.edu>; Watkins, Dawn E. <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>
Subject: RE: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

CAUTION! This email came from outside UF or UF Health. Exercise extra caution clicking links and opening attachments from any and all senders.

Hi Andy and Susan,

Julie Birdsong, Implementation Services, Senior Director would like to know if you have any interest in setting-up a call with SIS to learn more about his category? She is looking at setting-up a time for next week. Can you please provide me your feedback?

Many thanks,
Manuela

From: Cassidy,Manuela

Sent: Monday, September 9, 2019 3:47 PM

To: 'Carroll-Mazeli, Andy' <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggsl@shands.ufl.edu>

Cc: 'Alltop, Shirley' <alltos@shands.ufl.edu>; 'Watkins, Dawn E.' <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>

Subject: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Andy and Susan,

Two of our members, Kaiser Permanente and Legacy Health System are capturing savings by using Intuitive Surgical Endowrist refurbishment products. Surgical Instrument Service Company (SIS) is now the only supplier providing refurbishment to Intuitive Surgical's da Vinci EndoWrist. SIS offers a refurbished da Vinci EndoWrist at approximately 40% savings.

Since Intuitive Surgical is an off contract vendor, there's incremental GPO volume associated with moving that spend to SIS for refurbishment in addition to over 40% on line item savings.

Please see attached initial proposed savings. Please let me know if I can schedule an onsite presentation to learn more about this category and clarify additional questions.

Thanks,

Manuela Cassidy, MBA
Enterprise Client Manager
M (904) 608-7831
manuela.cassidy@vizientinc.com

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NOTE THAT THIS EMAIL ORIGINATED FROM OUTSIDE OF INTUITIVE SURGICAL..

Be alert for fraudulent emails that spoof internal "@intusurg.com" email addresses. Report these or other security threats to:
ITHelpNow@intusurg.com.

EXHIBIT 8

to

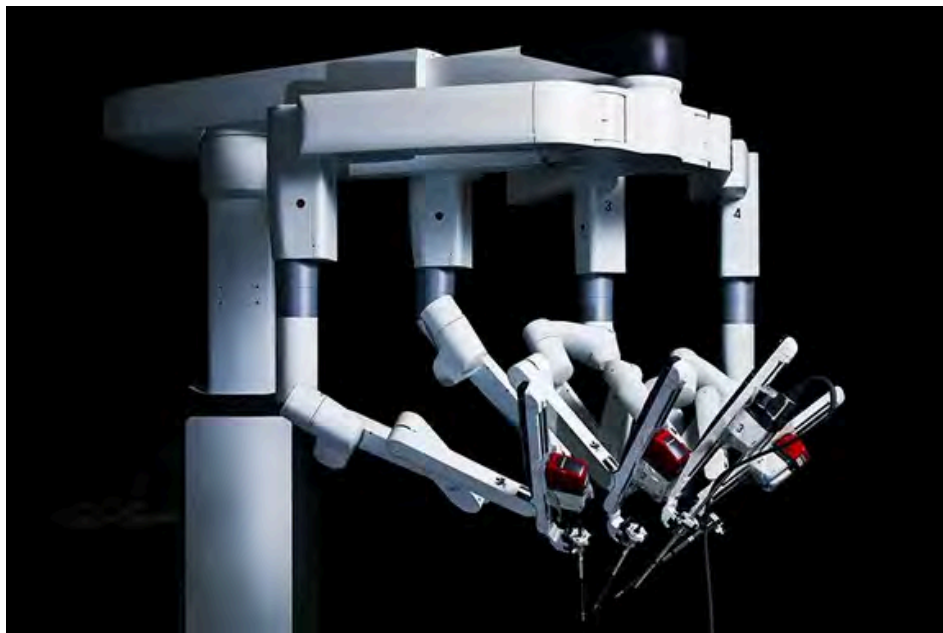
**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

Surgery > General Surgery

Op-Ed: Addressing Our Da Vinci Addiction

— A call to action for everyone in healthcare

by Eve Cunningham, MD, MBA
October 17, 2020



It's no secret that financial analysis comparing the costs of surgery performed via different approaches has shown that robotic surgery is more expensive. Some healthcare systems even report a [net negative margin](#) for robotic procedures when compared with open and laparoscopic approaches. While we expect to have winners and losers in the world of healthcare economics, the prospect of losing money on a surgical approach that continues to increase in [volume and popularity](#) is unsustainable.

My background as a gynecologist turns my focus to use in hysterectomy, the second most common gynecologic surgical procedure.

My initial reaction is to question the data comparing the costs of surgery by approach.

Robotic gynecologic surgeons anecdotally report that they are being funneled more challenging cases from their non-robotic surgeon colleagues. As a former high-volume robotic gyn surgeon myself, I can attest to being on the receiving end of referrals from my non-robotic surgeon colleagues to operate on patients with high body mass index, large uterine size, severe endometriosis, and history of multiple abdominal surgeries -- all characteristics that can lead to longer case times and higher costs.

My second reaction is one of fear.

Mass exodus of surgeons or recruitment challenges are a risk if robots are restricted or removed from facilities. A [2011 study](#) from the *Journal of Minimally Invasive Gynecology* demonstrated that 58% of ob-gyn residency programs were training their residents in robotics. As a physician leader tasked with hiring a physician workforce, my observation is that new surgeon graduates are making career choices based on their ability to access the tool, a situation also reported in this [2014 article](#).

Trying to "force" the existing active robotic surgeons to use an alternative approach to hysterectomy wouldn't go over well, either, especially when many of our active robotic surgeons now lack the confidence and skills to perform complex hysterectomy via alternative approaches.

I can attest to that evolution. Fresh out of training, I performed all my hysterectomies laparoscopically and vaginally, because that was how I was trained. Living the

straight stick" life was fun for a few years.

Eventually, I demoed the Intuitive Surgical da Vinci robot console. Ten minutes into my demo and the Intuitive rep had me booked for a training session in Sunnyvale, California. There I got my chops operating on a pig, and I never looked back.

Medical News from Around the Web

USA TODAY

This FDA-approved drug promises a new way to treat schizophrenia

CBS NEWS

Free COVID tests are back. But there are more accurate tests for sale.

BECKER'S HOSPITAL REVIEW

MRIs cut overdiagnosis in prostate cancer screening: Study

Laparoscopic surgery was a gateway drug. Robotic surgery was hardcore. Four years later, my advanced laparoscopic and vaginal surgery skills had atrophied and were rusty, at best.

My story is typical. I have a distinct memory circa 2014 of sitting in the surgeon lounge with a group of my other gyn-robotic colleagues and listening to them marvel about the robot.

One surgeon reported that the robot extended her career as her back and hip no longer bother her as they did with laparoscopic cases, a finding that was validated in [this study](#).

Another surgeon shared how she was able to operate up to her due date for her current pregnancy, all because of the robot. A third surgeon compared the robot to driving a Ferrari versus the laparoscopic '57 Chevy.

Here we are in 2020, and an entire generation of gyn

surgeons have adopted and trained on the da Vinci.

Robotic surgery now generates an annual [\\$3 billion dollars](#) in revenue and is expected to grow by 15% per year until 2022.

The deeper question for health systems is how to [address the economics](#) of the situation.

Below is a stakeholder assessment and proposed contributions to forge a path to a high-value hysterectomy clinical pathway.

Healthcare Systems and Surgeons

Healthcare systems are bearing the brunt of the economic loss and expense related to the explosion of robotic surgery. Surgeons often lack awareness and understanding of what we can do to reduce costs.

I recall a dialogue with my colleagues several years ago in which we compared the costs of various hemostatic agents we routinely used in the operating room. We were surprised to learn that the cost varied from \$13 to \$250 per case. This discussion pushed us to create an equipment and supply scorecard that compared our supply chain patterns with a focus on value, best practices, and evidence-based medicine.

The concept of a surgeon scorecard is not unique and has been well documented as an effective intervention in a recent *JAMA* article in which a [7.4% cost reduction was realized](#).

Another article highlighting a similar intervention for [orthopedic procedures](#) demonstrated an 8.7% reduction in cost when surgeons were given a monthly "Surgeon Value Scorecard" over a 9-month period.

In order to support opportunities like these, health systems need to invest in technology and analytic solutions to engage and influence physician behaviors that offer real-time feedback and empower physician leaders with the tools and resources they need to make value-based choices in the operating room.

Approaching a high-value hysterectomy clinical pathway by focusing on four areas of opportunity in a continuous fashion -- supply costs, length of stay, surgeon efficiency, and route selection -- is a great starting point. Individual surgeon and institutional scorecards that drill down into these factors can be leveraged to identify mentorship opportunities, potential behavior changes, and most importantly, best practices.

Intuitive Surgical and Device Manufacturers

Aligned incentives between medical device representatives is critical to our success. As we introduce technology solutions into our healthcare systems, we need to ensure that a value prospect is included in the contracting process.

In my experience, the Intuitive reps often encourage trainees to switch out instruments and select higher-cost instruments as they are incentivized to maximize surgeon utilization.

A 2010 *ACOG Green Journal* article [identified disposable equipment cost opportunities](#) in robotic surgery.

Healthcare systems and training programs should demand that device manufacturers develop the highest value training program for adoption of their device and respect the clinical pathways and best practices within an institution for utilization of the device.

Residency Training Programs

Non-academic health systems should work collaboratively with graduate medical education programs, sharing their challenges, and influencing curriculum and training that promotes value in surgeon development. A 2013 *AJOG* [article](#) emphasized the importance of surgeon efficiency in robotic surgery cost management.

Integrating an efficiency assessment and cost management into surgical training is described in this [article](#) as part of the robotic credentialing pathway.

Academies and Society Consensus Statements

In 2009, ACOG [reinforced](#) their recommendation that vaginal hysterectomy was the preferred route of hysterectomy via a Committee Opinion, yet despite this statement, [vaginal hysterectomy rates](#) continued to decline. This is a testament to the fact that an academy, college, or society statement alone cannot influence the tide of change.

That being said, they can lead the charge in engaging the above stakeholders to develop high-value clinical pathways that incorporate emerging technologies.

In conclusion, the impact of the COVID-19 global pandemic has placed significant financial pressure on healthcare systems, making opportunities to identify value in care delivery ever more relevant and urgent.

The use of a high-value hysterectomy clinical pathway that provides real-time and transparent feedback to surgeons is an approach that can address factors related to cost and quality and integrate value into surgical care.

[Eve Cunningham, MD](#), is the chief medical officer of Providence Medical Group.

Public Health & Policy

COVID Drug Recall;
Update on Nurse Struck by
Lightning; Surrogates'
Pregnancy Risks

Infectious Disease

Pope's Illness; Docs
Against Trump; Another
Contact of Missouri H5N1
Case Fell Ill

Endocrinology

One-Year CGM Cleared;
Osteoporosis Lawsuits
Revived; Chemicals and
Early Puberty

Infectious Disease

COVID Czar's 'Sex Parties';
Nationwide Drug Recall;
Steward CEO Held in
Contempt

Public Health & Policy

EPA Scientists Say They
Were Pressured to
Downplay Health Harms
From Chemicals

Infectious Disease

'Sex Party' COVID Czar
Fired; Undiagnosed Iron
Deficiency; Many Papers
Partly Fake?

Medical News From Around the Web

USA TODAY

This FDA-approved drug promises a new way to treat schizophrenia

CBS NEWS

Free COVID tests are back. But there are more accurate tests for sale.

BECKER'S HOSPITAL REVIEW

MRIs cut overdiagnosis in prostate cancer screening: Study

CLINICAL ADVISOR


Sleep and Nighttime Agitation in Older Adults with Cognitive Decline

CIRCULATION

Sacubitril/Valsartan in Pediatric Heart Failure (PANORAMA-HF): A Randomized, Multicenter, Double-Blind Trial.

BRAIN

Plasma metabolomic signature of healthy lifestyle, structural brain reserve and risk of dementia.

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EXHIBIT 9

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

The “monopoly” issue

- As of December 2015, 3597 da Vinci surgical systems installed in the world
- Intuitive Surgical has built high barriers to new entry of surgical robots by:
 - superior product offerings
 - intellectual property protection
 - multiple regulatory clearances
 - large installation base
 - worldwide training centres
 - strong customer relationships

Trended *da Vinci*® System Installed Base

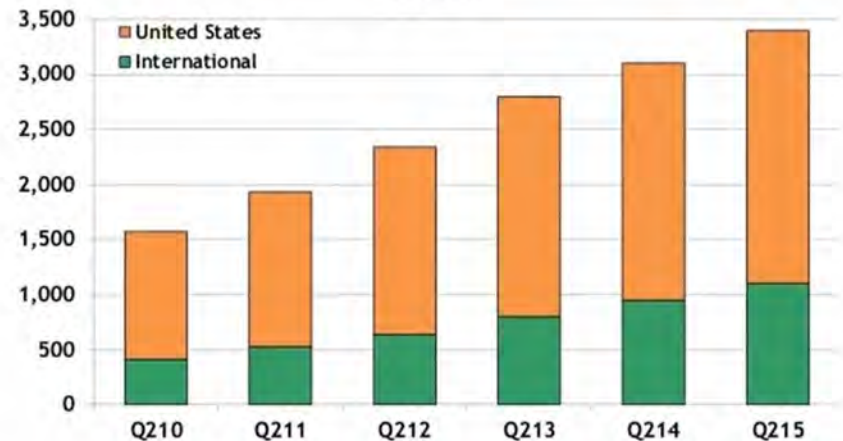


EXHIBIT 10

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

Feb 12, 2014

Technology Widens Care Options for Rural Hospitals

by Candi Helseth (<https://www.ruralhealthinfo.org/rural-monitor/author/candi-helseth>)

Rapidly advancing technological developments are helping rural hospitals save patients—and themselves. Throughout the country, hospital leaders are looking at ways they can strengthen their bottom line using technologies that better serve their communities and keep patients closer to home.

In Michigan, urban surgeons perform complex procedures at small Critical Access Hospitals (CAHs). Robotic surgery expands physician and hospital capabilities in Minnesota. And in Washington, medical robots place remote physician specialists at the bedside of critically ill patients.

"Ten years ago, what we're doing wouldn't have been possible," asserts Michigan Rural Healthcare Preservation (MRHP) CEO Ethan Lipkind. "There have been astronomical strides in medical technology that have improved engineering, and advancements that have made it possible to provide sophisticated procedures in settings that were previously impossible. And we can do all of it in an exceptionally safe environment that benefits both patient and hospital."

Today's patients are smart and savvy, and they request best practice options such as robotic surgery, according to Joy Johnson, chief operating officer at Sanford Bemidji Medical Center (<https://www.sanfordhealth.org/locations/sanford-bemidji-medical-center>) (SBMC) in Bemidji, Minn. Patients want to stay close to home for care but they will travel long distances for best practice surgical options, Johnson said, adding that rural hospitals must be proactive technologically to maintain a solid bottom line.

"The old paradigm was that a hospital's purpose was to aggregate all the professionals in one place and bring patients there," says Tom Martin, CEO at Lincoln Hospital (<https://www.lincolnhospital.org/>) in Davenport, Wash. "Now that ability is changing to us bringing the professionals to where the patients are."



In Washington state, medical robots place remote physician specialists at the bedside of critically ill patients. Here "Hawkeye" the robot is set to visit a patient in his room at Lincoln Hospital in Davenport, Wash.

Increasing Treatment Access

Lipkind knows of no organization similar to MRHP, a nonprofit network created in 2010 to help remote rural hospitals remain operational by developing environments that offer patients the advantages of the latest technologies. MRHP collaborates with CAHs in Deckerville (<https://aspirerhs.org/locations/deckerville-community-hospital/>) and West Branch to operate a surgical program where four urban surgeons travel to the CAHs to do neurosurgery, complex urology, spine and orthopedic surgeries, fusion procedures and advanced pain care management.

"The traveling surgeons are the lifeline of this arrangement," Lipkind commented. "Patient outcomes have been stellar. In these small rural hospitals, the focus is on one individual patient at a time. So these patients get more individualized care."



Dr. Gerald Schell, a board certified neurosurgeon, is one of four urban surgeons who travel to Critical Access Hospitals in Michigan, offering patients the option of local care.

Mary Ann*, a patient with a lumbar disk injury, terms her surgical experience "fantastic." Dr. Gerald Schell, a board certified neurosurgeon with Michigan Clinic Neurosurgery (<https://schellspinal.com/>) in Saginaw, performed Mary Ann's multilevel spinal fusion in the Operating Room of the 15-bed Deckerville Community Hospital (DCH).

"I was treated like family from walking in the door until being discharged," Mary Ann said. "The staff went above and beyond the call of duty."

According to DCH Chief Financial Officer Valerie Bryant, the surgical program has stabilized DCH financially, improved employee morale and been embraced by patients. DCH's upfront investments included equipment upgrades and staff training.

"It takes additional nursing and clinical staff because we need all hands on deck the days these surgeons come in," Bryant said. "We have to take care of our patients in the hospital and put more staff in the OR. But the benefit has definitely outweighed our additional expenses."

MRHP is expanding surgical options at these network hospitals and has begun working with two more rural hospitals to develop programs specific to their needs. Lipkind said MRHP is also affiliated with physician offices, the Field Neurosciences Institute (<https://www.fni.org/>) and Central Michigan University College of Medicine (<https://www.cmich.edu/academics/colleges/college-of-medicine>).

Robotic Surgery Offers New Options for Rural Patients

Sanford Bemidji Medical Center (<https://www.sanfordhealth.org/locations/sanford-bemidji-medical-center>) in Bemidji and Essentia Health-St. Joseph's Medical Center (<https://www.essentiahealth.org/find-facility/profile/essentia-health-st-josephs-medical-center-brainerd/>) in Brainerd are two rural Minnesota hospitals that have installed the da Vinci Surgical System, the first robotic surgical system approved in 2000 by the FDA. The system has a camera that provides a multi-dimensional view inside the patient's body and a minimally invasive robotic arm with a pivoting wrist that can manipulate microscopic instruments in tiny areas inside the body. The surgeon navigates all aspects of the surgery from an exterior panel.



Dr. Benjamin Roy, a board certified general surgeon trained in robotic surgery at Sanford Bemidji Medical Center in Bemidji, Minn., shows a potential patient how the robotic system gives a view inside the body.

Currently, both hospitals are offering robotic procedures in the areas of general surgery, urology and gynecology. Difficult surgeries that couldn't have been done in the past at Essentia Health have become common procedures because of the minimally invasive technology using the robot, according to Essentia Health Urologist Dr. Scott Wheeler.

"Robotics take the minimally invasive world one step further," commented Dr. Hal Leland, an Essentia Health obstetrician/gynecologist who performs robotic surgery.

"Robotic surgery is significantly less invasive with less trauma to the body than there is even with minimally invasive surgeries," Johnson concurred. "Patients want robotic surgery because it means shorter hospital stays and faster recoveries for them. New physician surgical grads are trained in robotic surgery and they want to use those skills. If patient retention and physician recruitment are negatively impacted, that can impact a hospital's bottom line."

SBMC, which has 90 acute care beds, is at least 150 miles from the nearest tertiary centers so patients were traveling or being transferred long distances for critical services. Four years ago the board of directors adopted a strategic plan to improve patient care and safety by developing SBMC as a regional referral center. In addition to the robotic program, other high-tech improvements since then include a new cardiac program with 24-hour STEMI (<https://www.heart.org/en/professional/quality-improvement/mission-lifeline/systems-of-care-overview-and-implementation-strategies>) service, and a cardiac catheterization laboratory and a chronic wound program that includes hyperbaric oxygen therapy and advanced wound care.

"Hawkeye" the Robot Brings Specialty Care to Local Hospitals

According to the [Washington State Hospital Association \(https://www.wsha.org/our-members/rural-hospitals/\)](https://www.wsha.org/our-members/rural-hospitals/), the state's 38 CAHs are the healthcare cornerstone in rural communities, and their viability is threatened. Among the CAHs implementing innovative approaches to stabilize their operations is [Lincoln Hospital \(https://www.lincolnhospital.org/\)](https://www.lincolnhospital.org/), the first Washington CAH to use a robot (<https://vimeo.com/69120526>) to manage care for patients who have had strokes. Lincoln soon extended the program to include hospitalist management for all complex care patients. Within the first year of Lincoln Hospital adding the robot (which they call "Hawkeye") to its staff in 2010, patient transfers decreased by 24 percent and admissions increased by 21 percent, representing a \$1 million increase in revenue. Martin said other benefits include shorter patient hospital stays, fewer patient hospital readmissions and improved post-discharge patient management.

Contrary to the administration's fears that patients and staff might react negatively to a robot, Hawkeye was an immediate hit. "It's really amazing to watch Hawkeye at work," Martin commented. "These remote specialists basically see everything in the patient that a doctor in our hospital does. And the stethoscope quality is so good that there isn't any deterioration transmitting heart and lung sounds."

A 25-bed critical access hospital in a CMS-designated frontier location, Lincoln Hospital simply didn't have high enough patient volumes to justify hiring a full-time critical care specialist. But an outside review indicated that 38 percent of patients transferred to Spokane over a six-month period could have remained at Lincoln if critical care management was available.



A remote physician talks to a patient in his room via a medical robot at Lincoln Hospital.

"Our doctors are very competent but they weren't getting that inpatient exposure and skills usage that urban specialty doctors do, so they didn't always feel comfortable keeping complex patients here," Martin explained. "As they started using Hawkeye, they agreed it was extremely beneficial to have another set of eyes on their patients. With this additional clinical support, they have the ability to care for more patients here."

Currently, 14 rural hospitals in Washington state use TeleStroke, and three are developing TeleHospitalist. Critical care specialists or hospitalists at [Providence Health Care \(https://www.providence.org/locations?postal=99207&latlng=47.674,-117.375&radius=1500&page=1\)](https://www.providence.org/locations?postal=99207&latlng=47.674,-117.375&radius=1500&page=1) (PHC) in Spokane provide 24-hour support to the rural physicians and hospitals. According to PHC Telehealth Program Coordinator Denny Lordan, PHC is

developing TelePediatrics, TeleMental Health and TeleCritical Care. PHC also assists the rural hospitals with implementation to assure adherence to standard practice guidelines.

"Having subspecialists that we can make available to partner hospitals in the region elevates the level of care that rural patients receive in their own communities and helps to keep care local," Lordan said. "When we keep appropriate patients in their own communities, we also free up higher acuity beds at Providence for patients that need that level of care."

While these administrators are enthusiastic about high-tech solutions, they also agree that success won't happen without community education and support, a financial investment, and willingness to partner or network with other healthcare providers.

"I think as rural hospitals we have to realize if we are going to grow and use our facilities to the fullest extent, it's essential that we bring specialists into that mix," Martin said. "Newer technologies offer opportunities that rural hospitals should be evaluating. Clearly, we have to be willing to become part of a system of care where integrating clinically with large systems using this technology affords us the ability to remain independent. Technology affords us a new perspective. We've stopped looking at our feet and started looking at the sky."

* To ensure patient privacy, the Rural Monitor only uses patients' first names.

Back to: [Winter 2014 Issue \(https://www.ruralhealthinfo.org/rural-monitor/winter-2014\)](https://www.ruralhealthinfo.org/rural-monitor/winter-2014)

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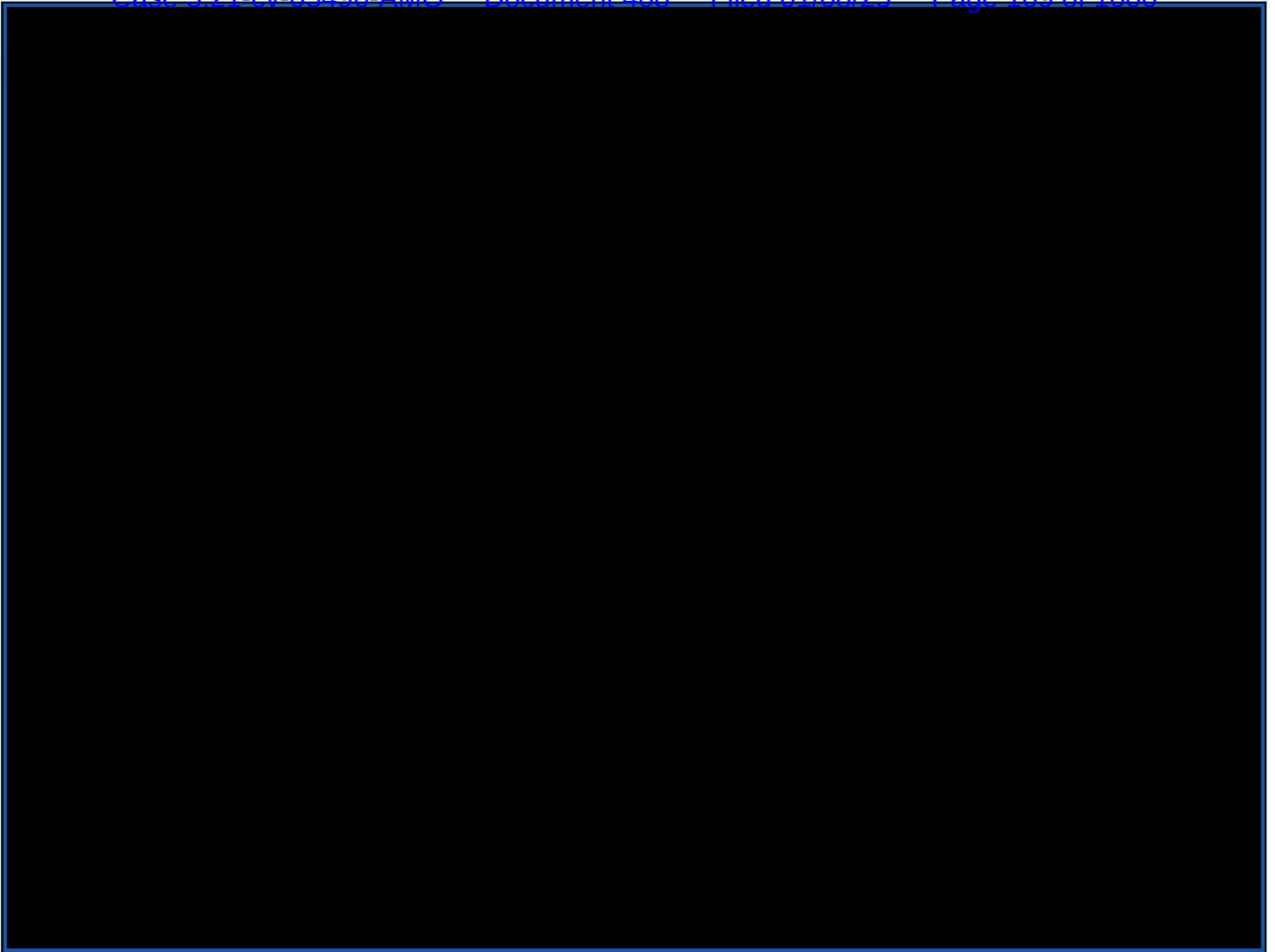
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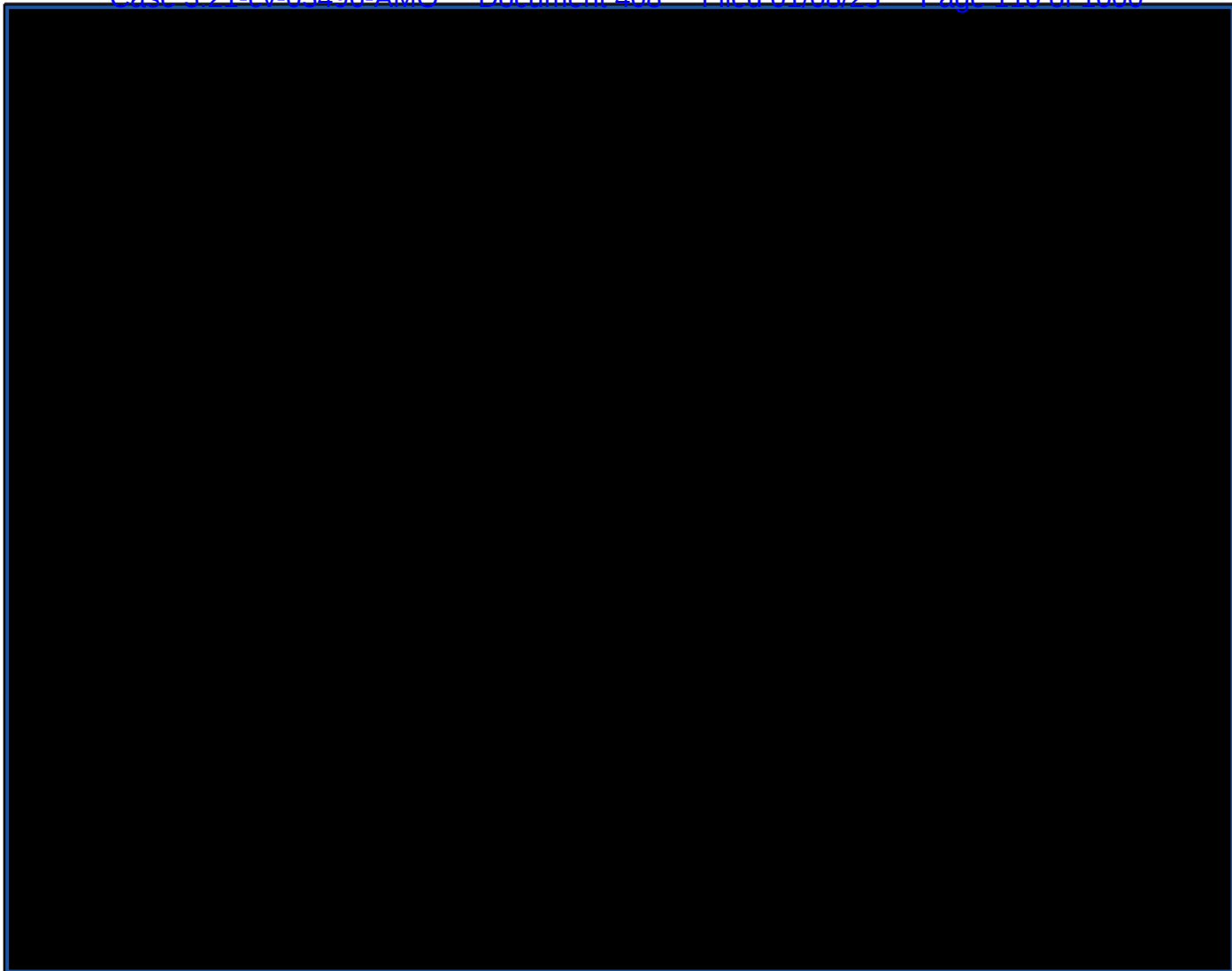
(<https://www.ruralhealthinfo.org/rural-monitor/winter-2014>).

EXHIBIT 11

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

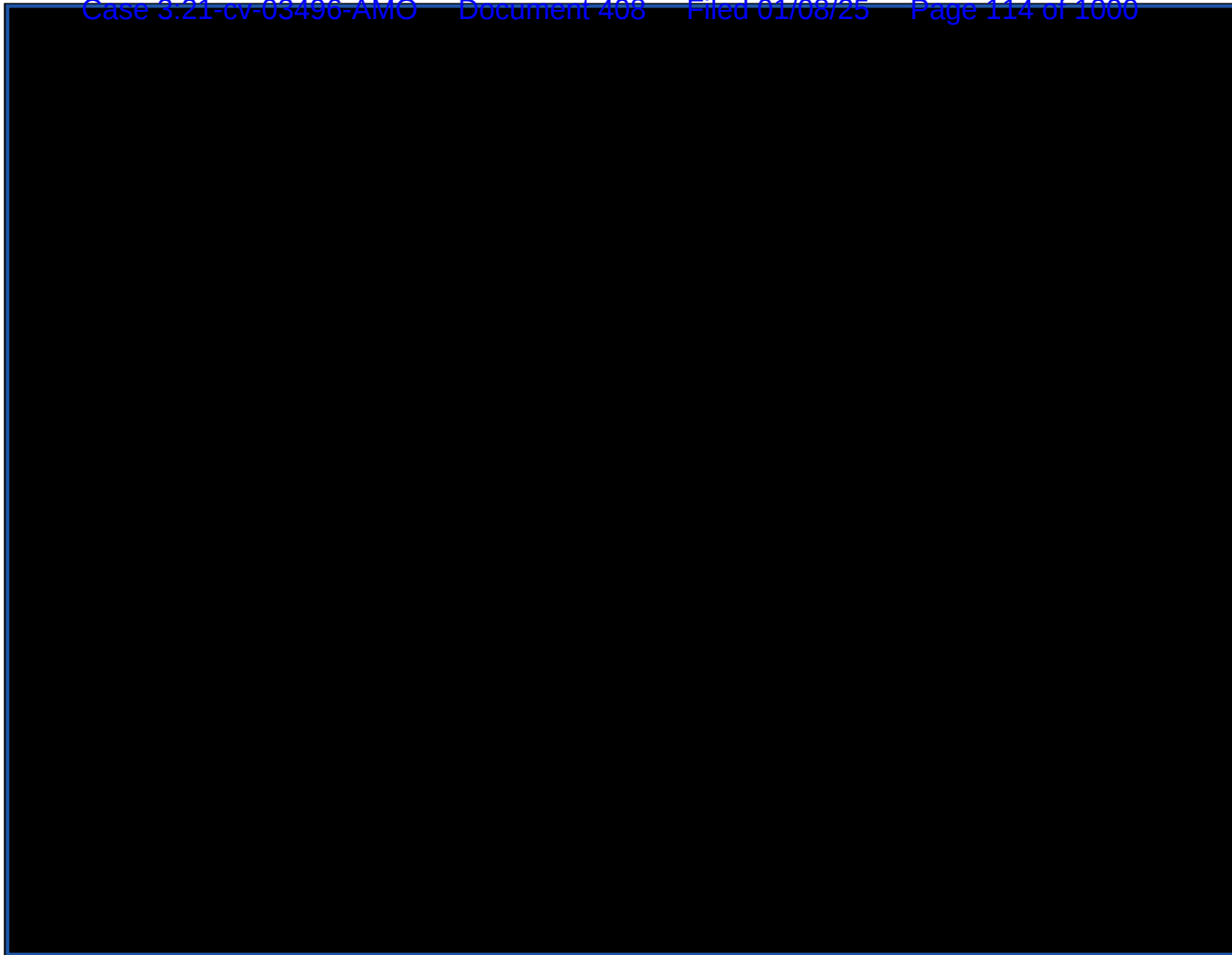


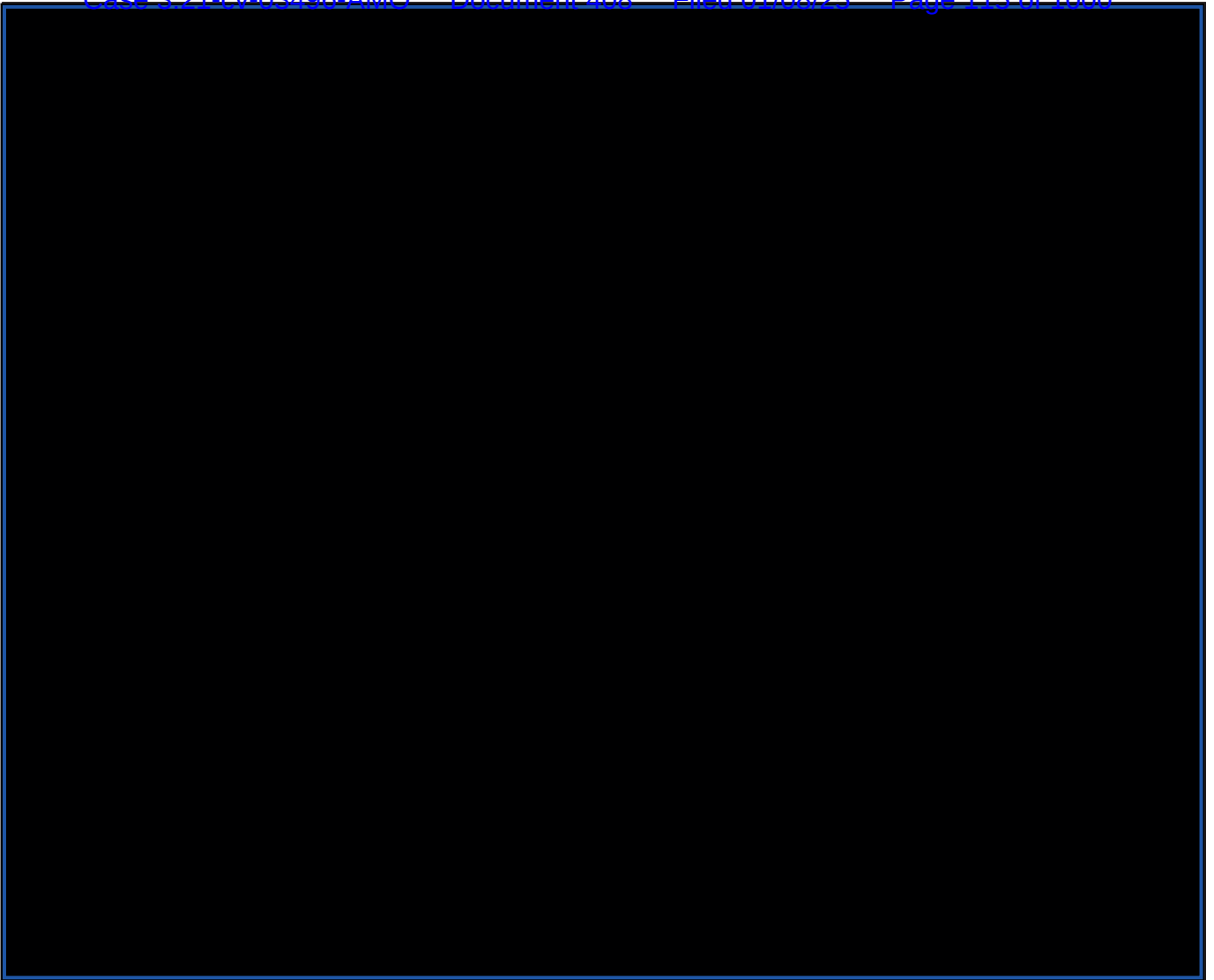


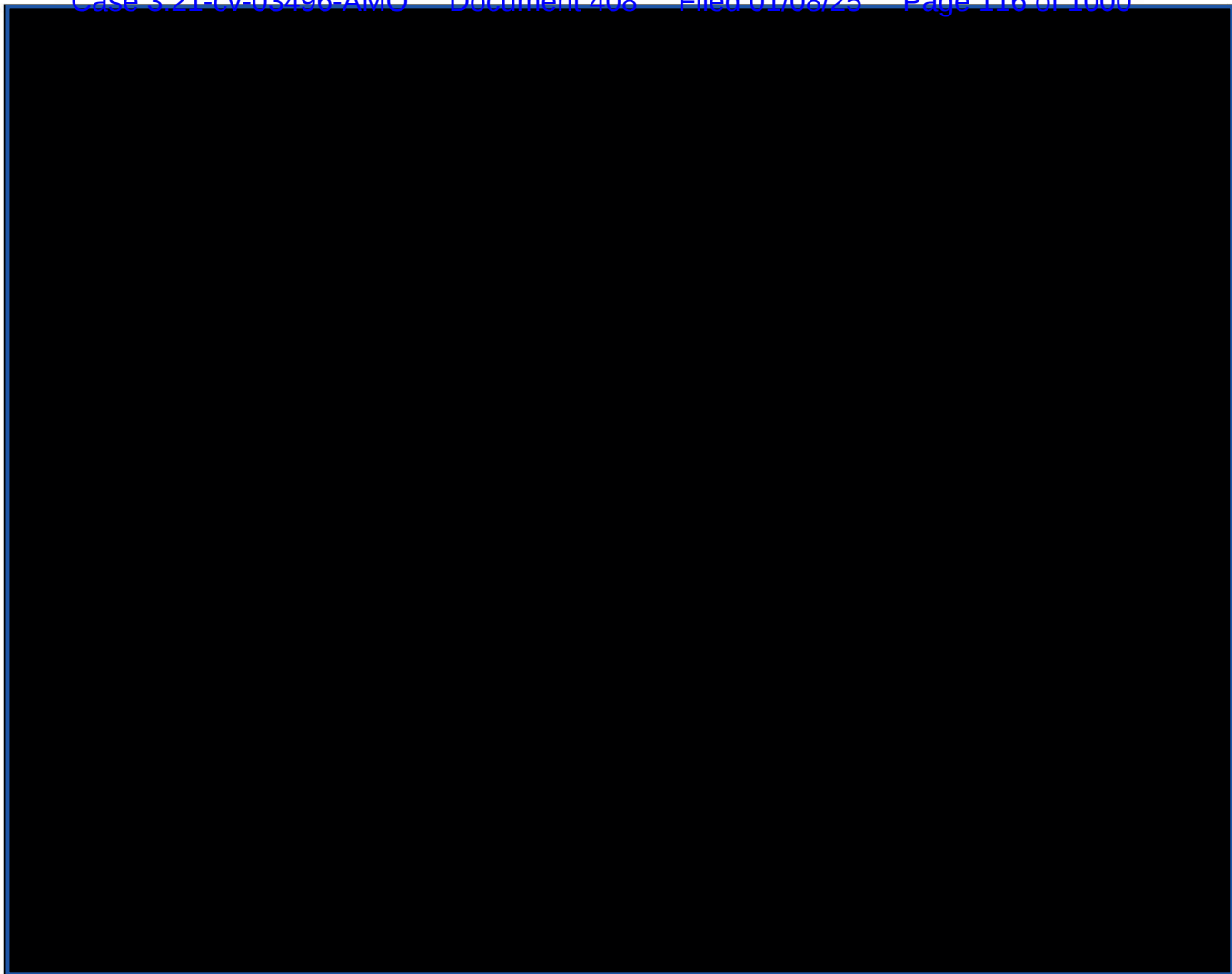


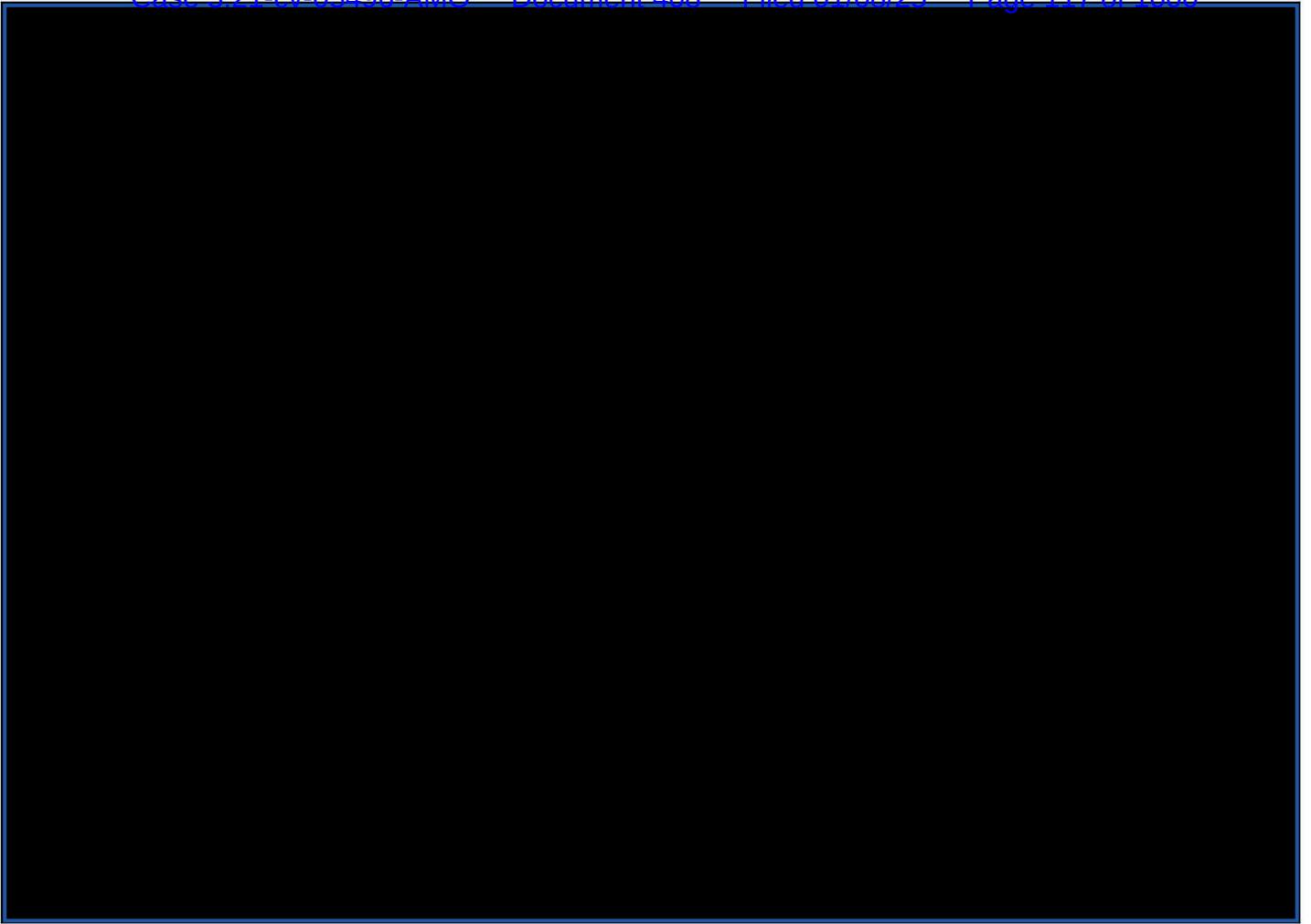




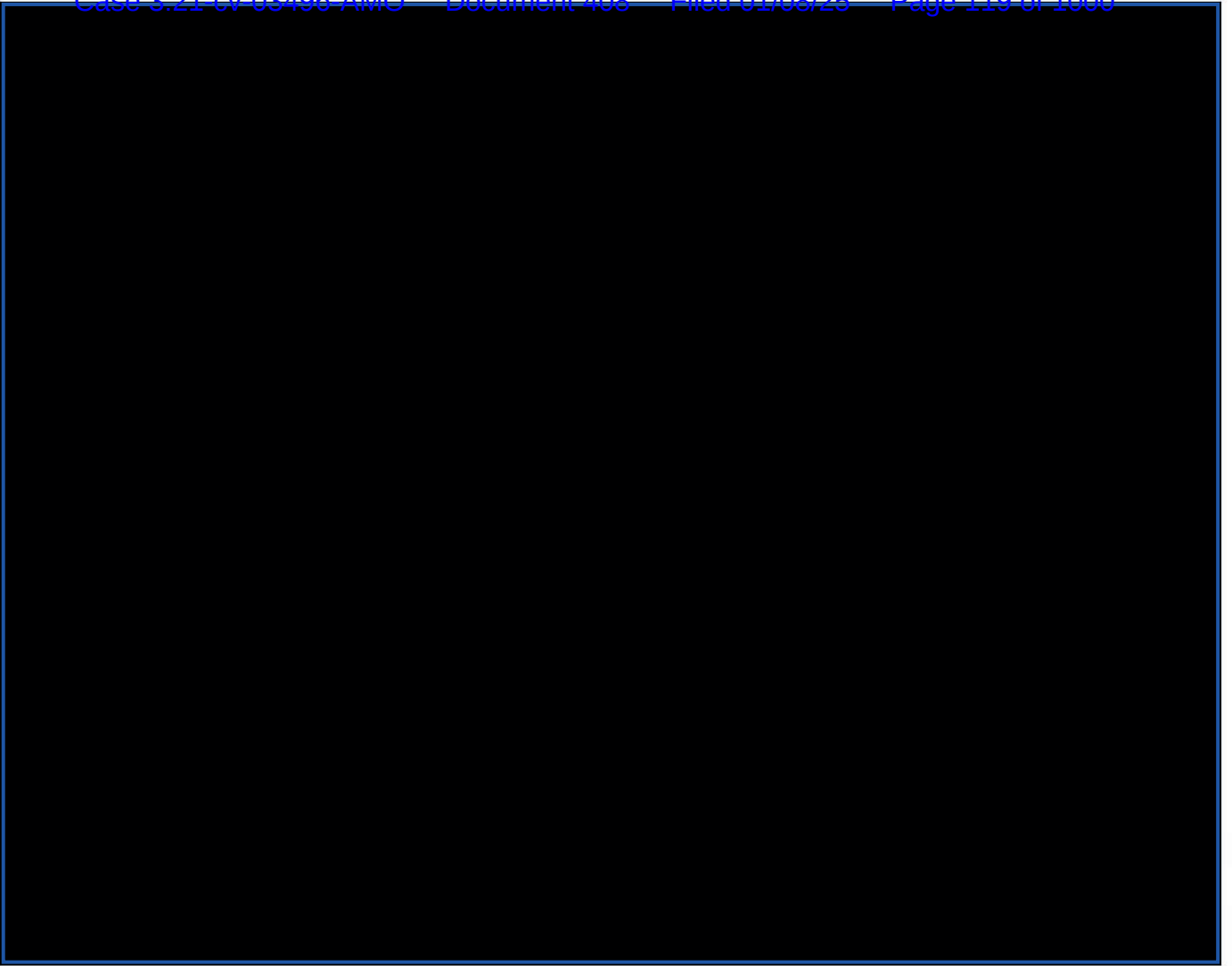




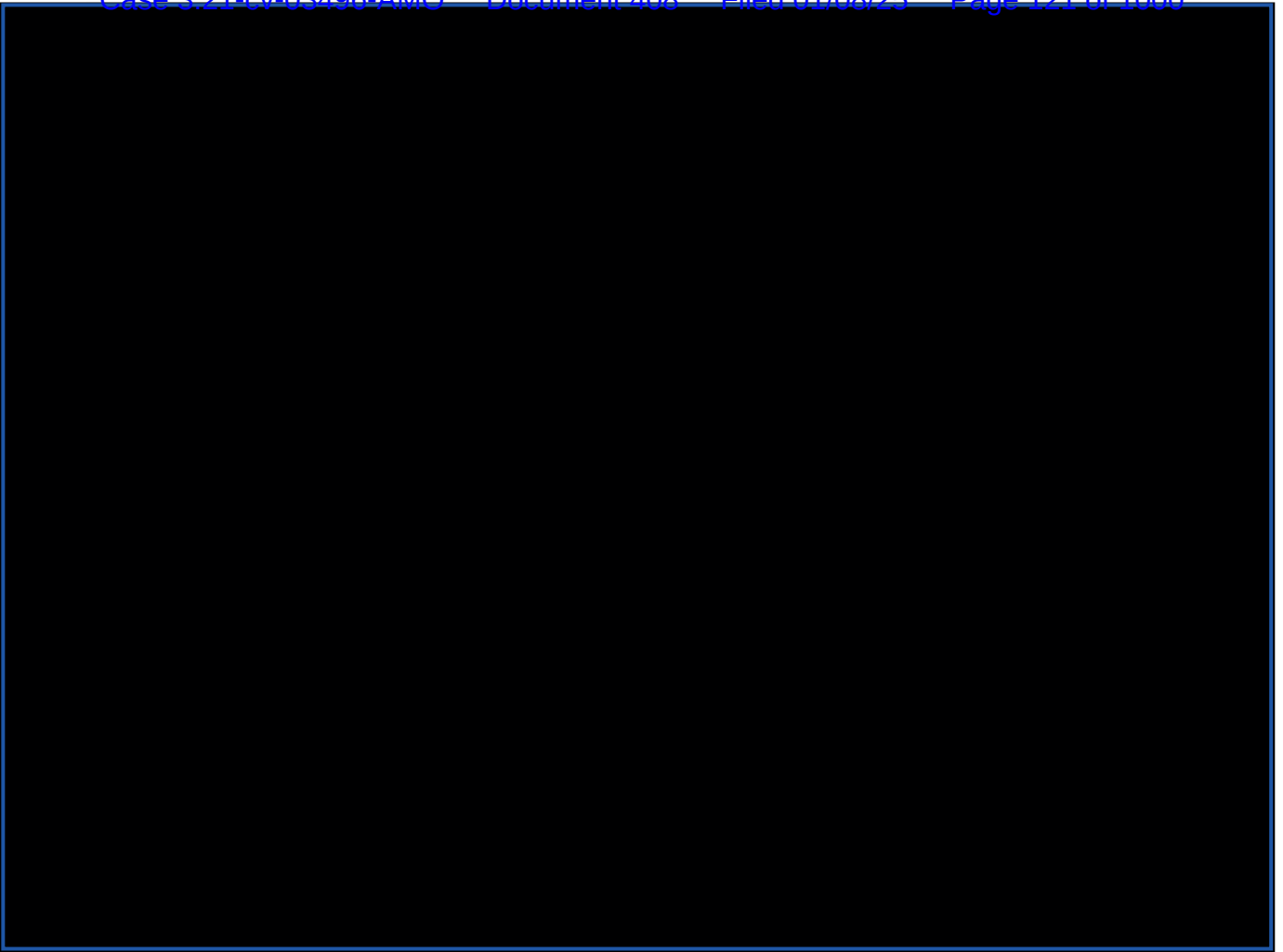




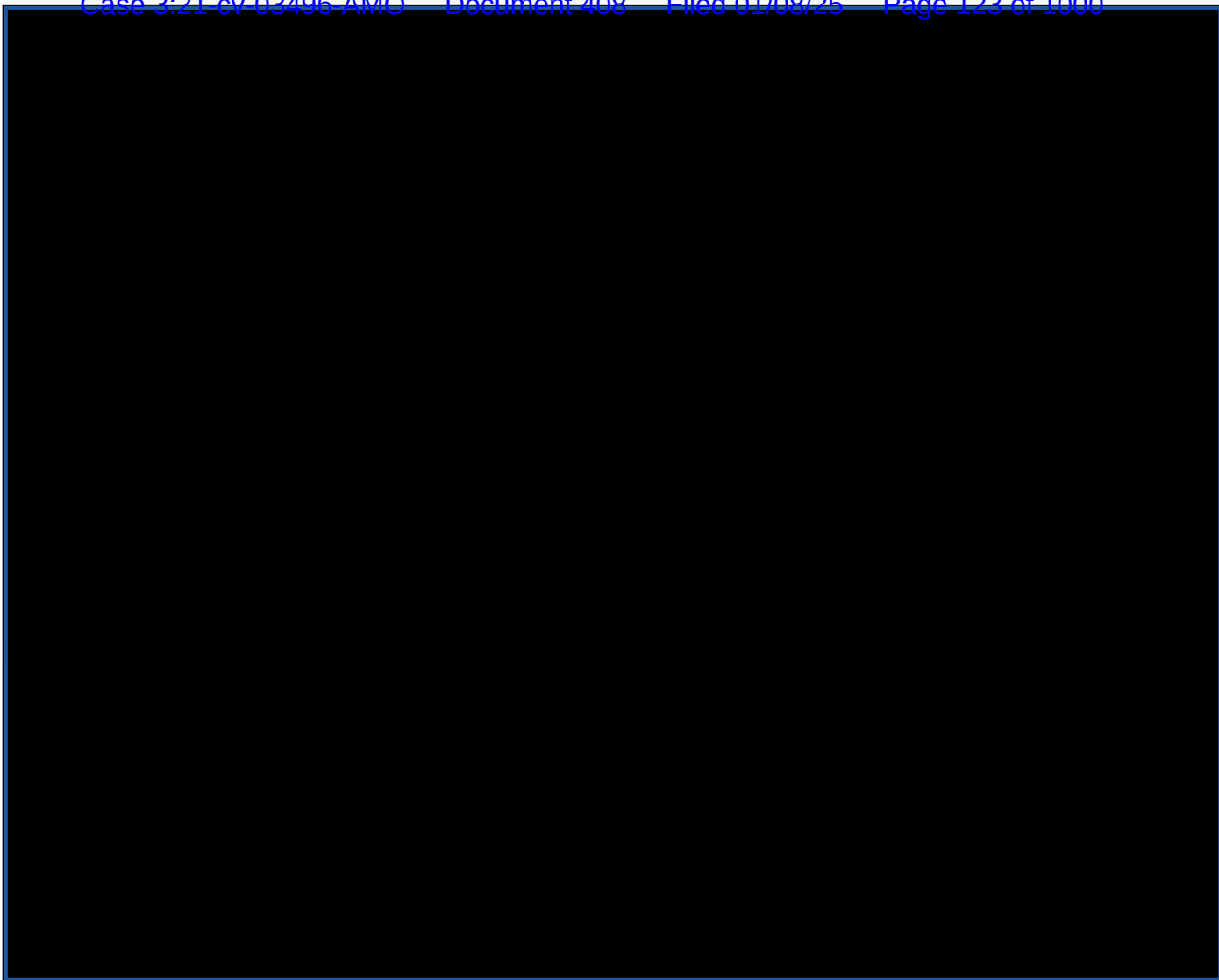


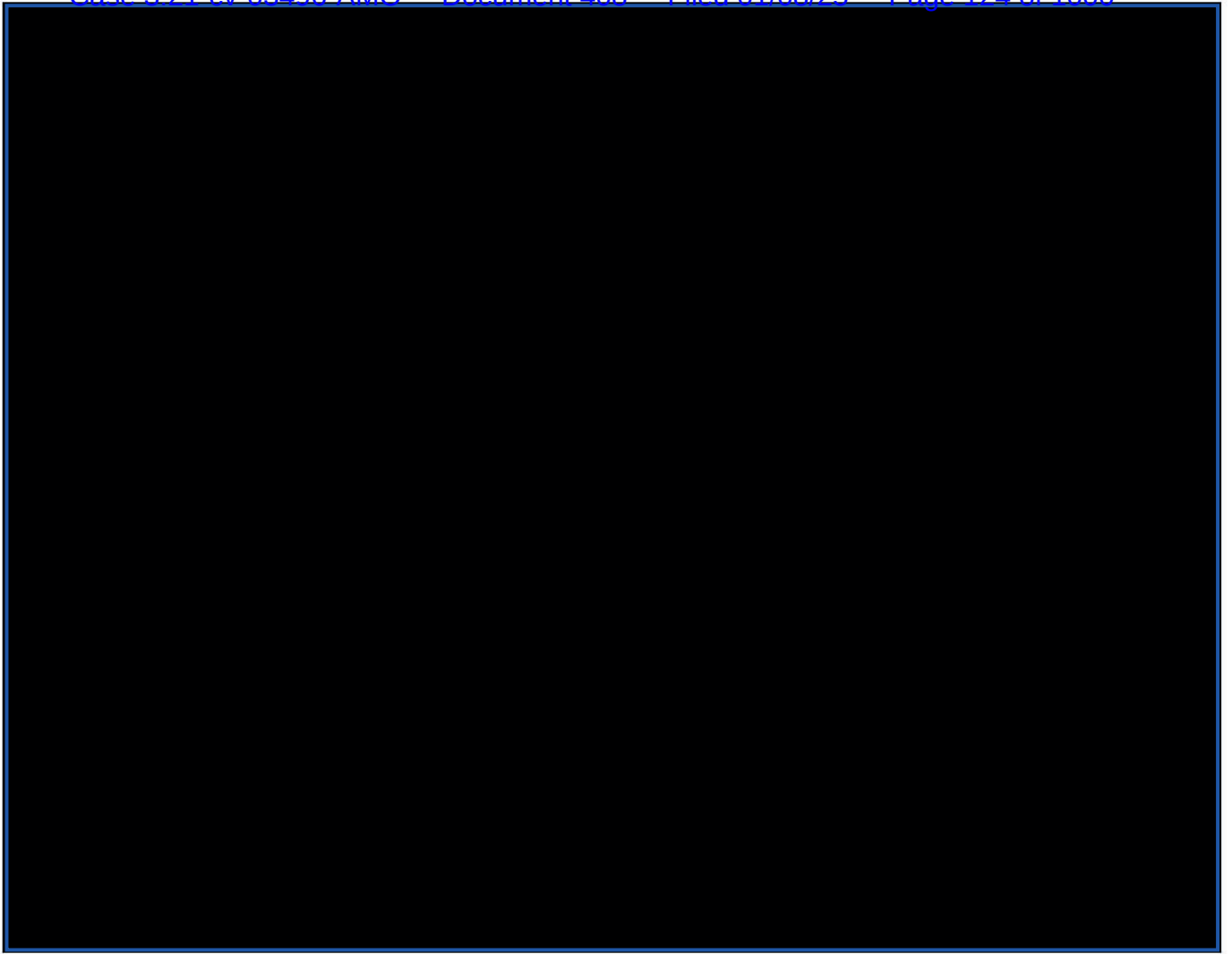


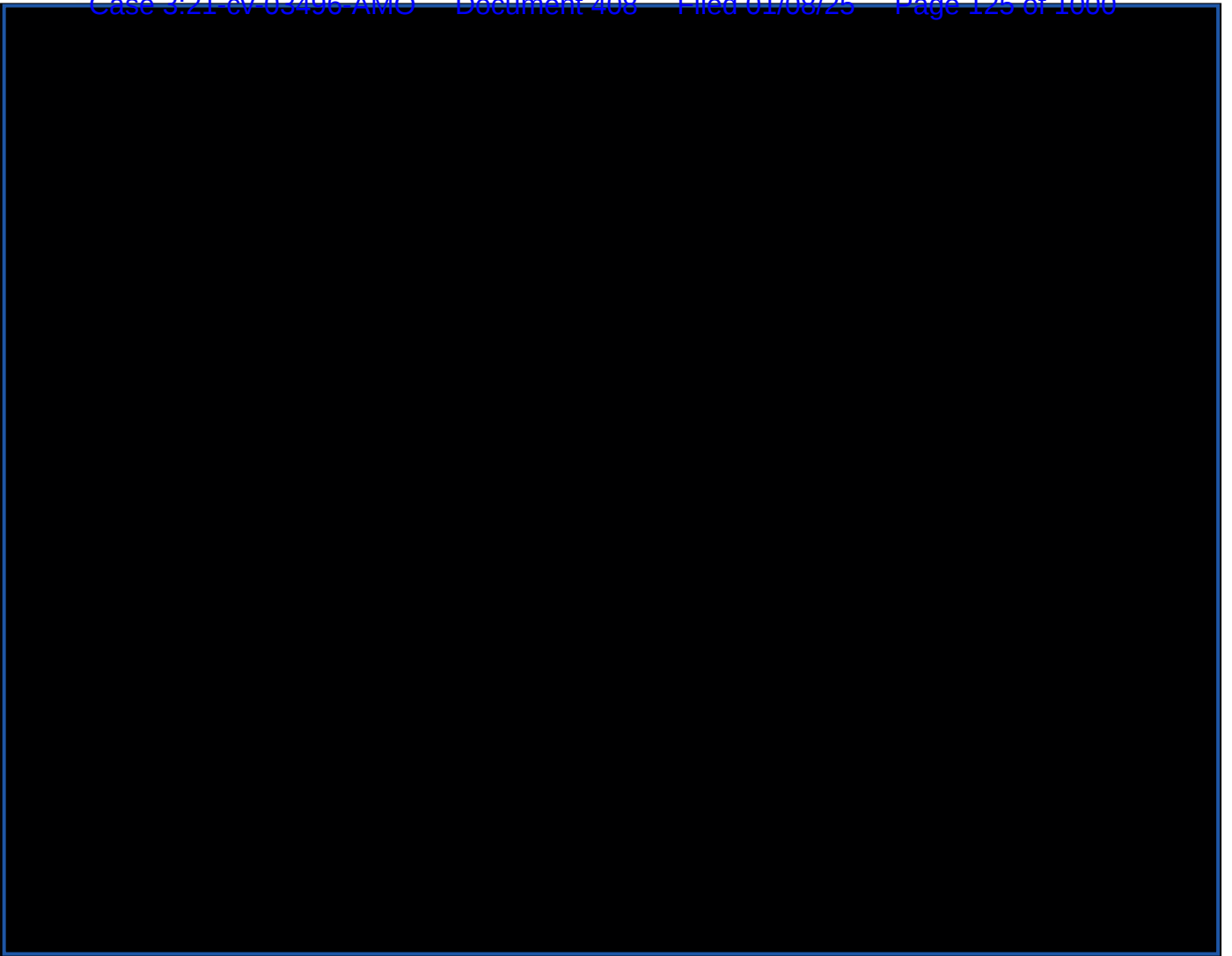


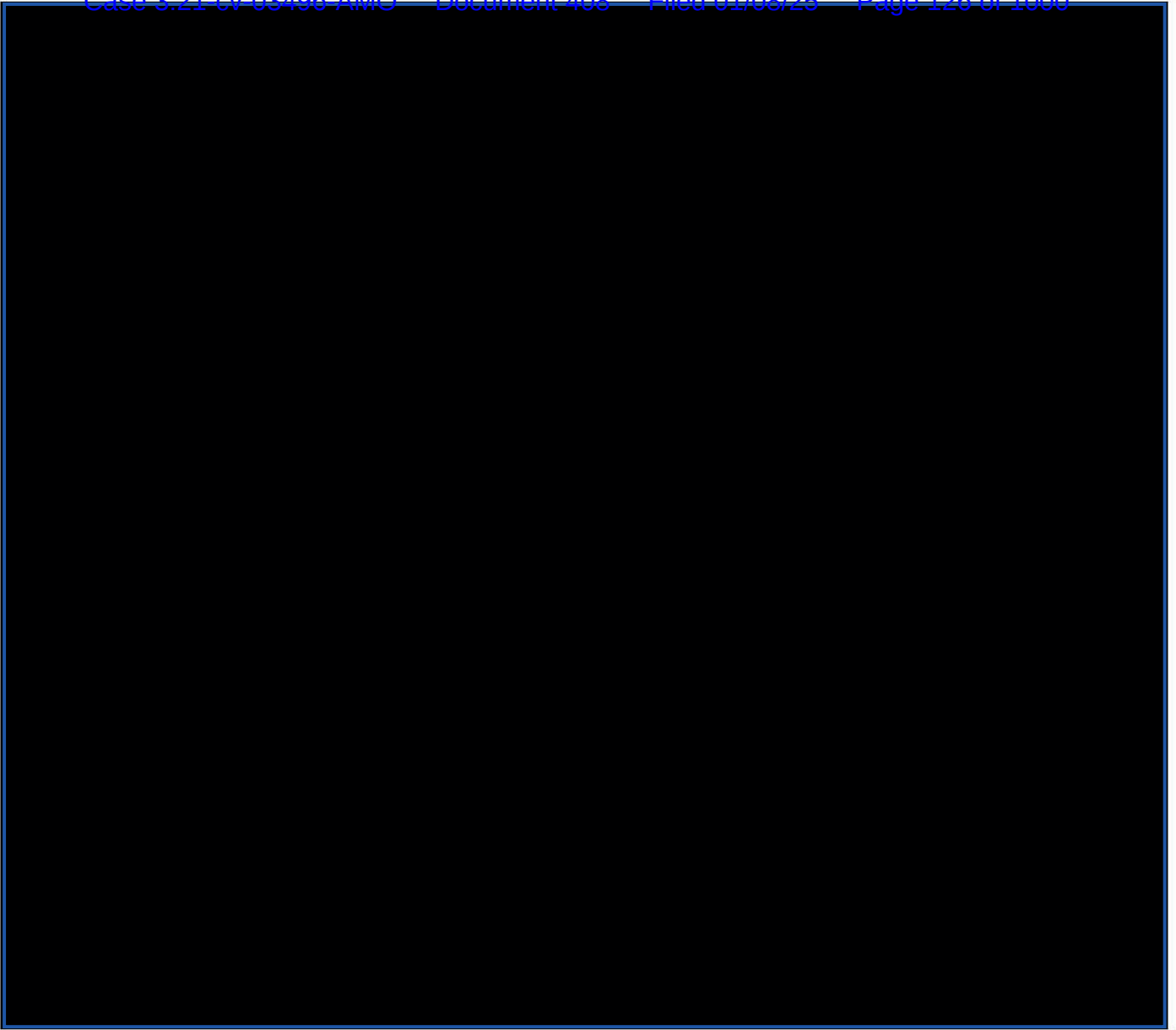














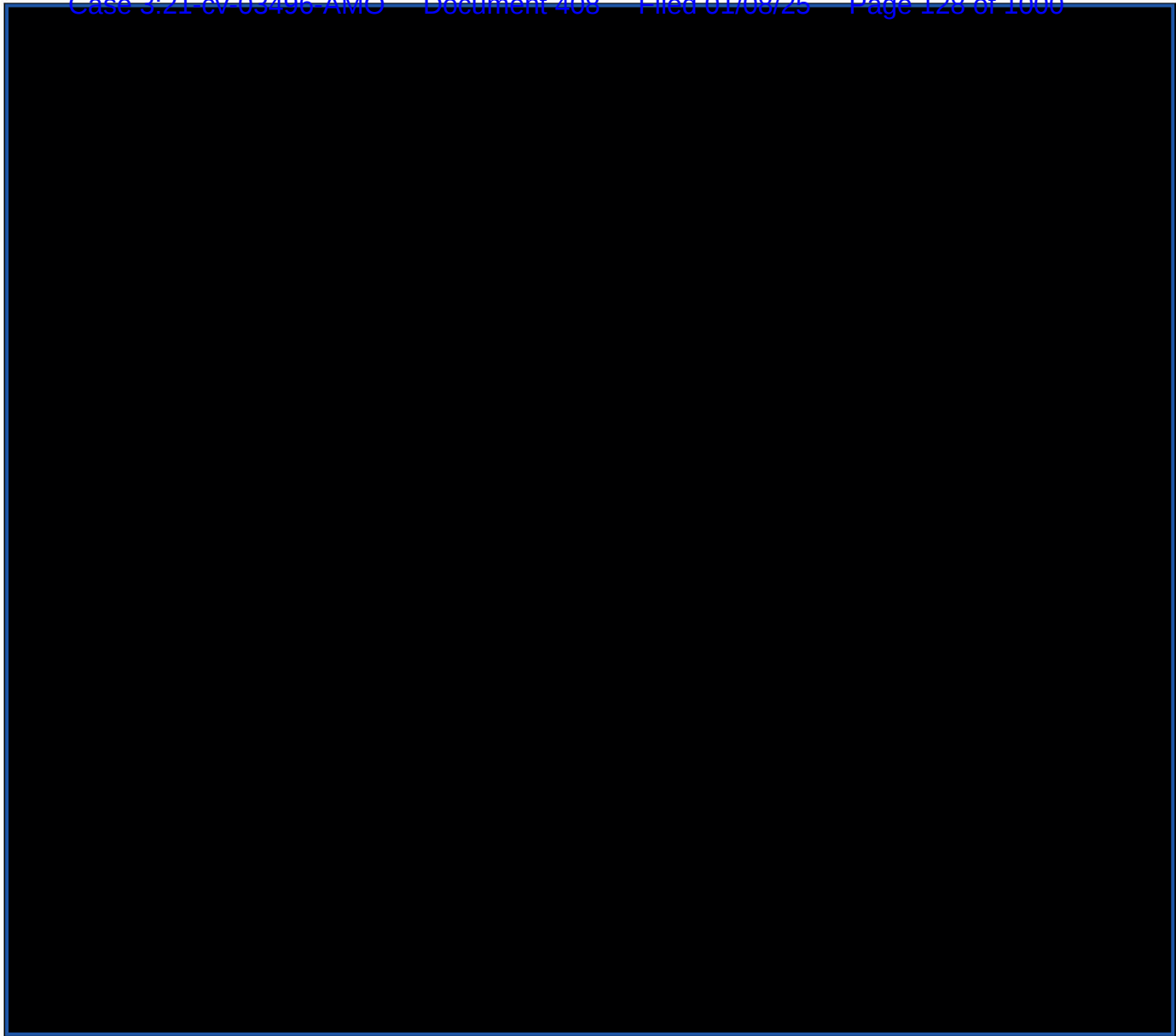








EXHIBIT 12

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
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STATEMENTS**

The following is a redacted version of the original report. See inside for details.

Americas Healthcare: Medical Technology

Digital Health: Robotic Surgery and the OR of the Future



We are initiating a new series of reports that cover the convergence of Healthcare and Technology, a topic we label Digital Health. To bring focus to this expansive topic, these reports will aim to identify specific areas where the convergence is tangible, significant, and actionable for investors. We start by exploring the future of robotic surgery. Future reports will address topics that include genomics, wearables, and digital therapeutics.

Introducing Digital Health

Introducing Digital Health. With this report, we are initiating a new series that covers the convergence of Healthcare and Technology – a topic we label Digital Health. The implications of this megatrend are vast as **we estimate 26% of the market cap in the S&P is somehow exposed**. In addition, the landscape between incumbents and disruptors is rapidly evolving as **32% of VC dollars in Healthcare was allocated to Digital Health** companies in 2018 (vs 15% five years ago).

Why is this important to investors? Global demand for Healthcare continues to rise thanks to demographics, economic growth and innovation. At the same time, current Healthcare systems increasingly look inefficient and unsustainable. As these systems reach new tipping points, we think disruptive forces will be increasingly driven by technology-driven advances (i.e., compute power, storage, mobility) that have already swept across other major industries such as retail, transportation and manufacturing. We also see the potential for newer emerging technologies (blockchain, 3D printing and augmented reality) to play a disruptive role in Healthcare. Taken together, we think these secular forces and disruptive technologies will have a meaningful impact to existing profit pools and earnings growth for incumbents.

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Our goal with these reports. To bring focus to this expansive topic, this report series will aim to identify specific areas where the convergence is tangible, significant, and actionable for investors. These areas include genomics (diagnostic testing, gene therapy), wearables (patient monitoring), imaging (MRIs, pathology), and digital therapeutics (software-based treatment of disease).

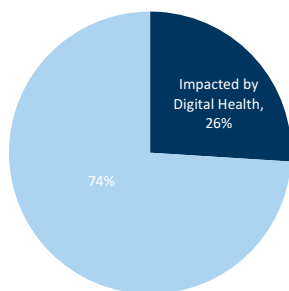
Our approach. In this report series, we will evaluate disruptive technologies from both public and private companies, track regulatory catalysts, apply a global perspective when relevant, and be opportunistic in the topics we cover.

Deep dive on robotic surgery. In this report, we attempt to frame the outlook for the next decade in robotic surgery. We evaluate the competitive landscape, consider new therapeutic markets where robotic surgery is taking off, and discuss key trends with a handful of key opinion leaders (KOLs).

Note: The following is a redacted version of “Digital Health: Robotic Surgery and the OR of the Future” originally published Nov. 15, 2018 [30pgs]. All company references in this note are for illustrative purposes only and should not be interpreted as investment recommendations.

Our Report in Pictures

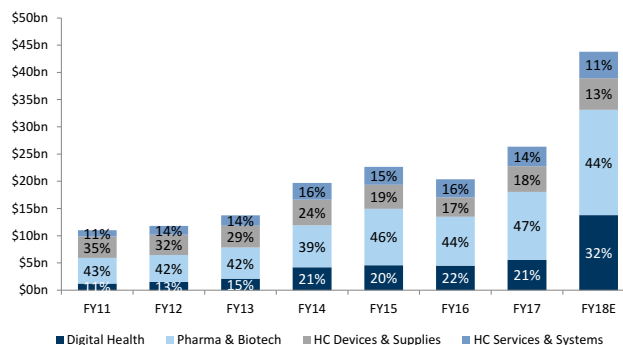
Exhibit 1: Digital Health touches roughly 26% of the S&P
% of S&P 500 Market Cap Impacted by Digital Health



Impacted firms are defined as companies in the Healthcare sector and large cap Technology companies with substantial investments in Digital Health.

Source: Company data, Goldman Sachs Global Investment Research

Exhibit 2: VC funding for Digital Health is rapidly increasing
\$13bn+ in FY18, >30% of all Healthcare deals



Source: National Venture Capital Association, Rock Health, Goldman Sachs Global Investment Research

Robotic Surgery Is a Global Theme

Europe

The developed markets are the areas at the forefront of focus for robotic surgery entrants. Though markets within the continent have idiosyncrasies, an obstacle we believe worth noting is the push by surgeon societies, and not manufacturers, to administer training. Conversely, any momentum towards outpatient care should be constructive for robotic surgery. Having said that, companies like CMR Surgical have noted they are intent on capitalizing on home field advantage and incremental improvements such as mobility to penetrate a virtually untapped market in Europe.

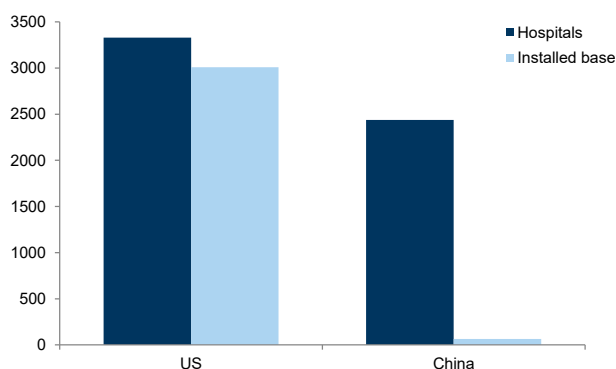
China

China, a less developed market, is seeing a spike in interest among patients in the field of robotic surgery. Based on our conversations with industry participants, there is a real market for affluent Chinese patients who wish to pay out-of-pocket for robotic procedures. Having said that, the market is less accessible than it otherwise could be due to political factors. In recent weeks, China's National Health Commission announced a new quota allowing for the placement of an incremental 154 surgical robots at state hospitals through the end of CY20. The move comes several years after the previous quota was filled and expired in 2015, leading to several years of pent-up demand in the Chinese market.

We believe the current general trade environment to be disadvantageous to those seeking to grow the use of surgical robots in Chinese markets. Chinese surgeons often have cited cost as a major constraint, as reimbursement for robotics is not as established as it is in the United States. Surgeons therefore are more likely to perform a higher volume of surgeries and be part of system in which the large capital outlay of a robot could be justified by a steady flow of well-to-do patients.

Exhibit 3: China largely untapped, nearly as big as the US

China Tier 3 hospitals vs US short-term acute care hospitals



Source: American Hospital Directory, National Health and Family Planning Commission, Company data, Goldman Sachs Global Investment Research

Another dynamic to keep in view is the push within China to develop robotic surgery supply from the country as part of the "Made in China 2025" initiative announced in

2015. As part of a broader push to modernize China's manufacturing capabilities to allow for the production of higher value goods, the government plans to support research into medical robotics, both in design and manufacturing capabilities. A number of smaller players within the country are developing platforms to bring to market bolstered by this program, though few are close to commercialization.

Conversations with KOLs

General Surgery

In the past decade, robotics have begun to supplant open and some laparoscopic procedures. Robot assisted surgery has proven itself to be a challenger to both open and laparoscopic procedures, displacing open procedures in colectomy, cholecystectomy, and bariatric surgery; conversely, it has challenged laparoscopic methods for procedures like inguinal hernia repair and ventral hernia repair. Several general surgeries have seen considerable uptake in robotics in the past decade.

An interview with Dr. Jay Redan of Celebration Health



To provide more color, we document our conversation with **Dr. Jay Redan** of Celebration Health.

Q. What is Celebration Health, what is your role and what role do surgical robotics currently play at your institution?

A. I am the Chief of Surgery at Florida Hospital-Celebration Health and serve as President of the Society of Laparoendoscopic Surgeons. Celebration Health is a "Living Laboratory" that brings the best technology to not only Central Florida, but to the world. Of the 8,000+ surgical procedures we perform in our 11 Operating Rooms annually, approximately **1/3 involve surgical robotics**. We use this technology in a variety of categories that include **orthopedics, head and neck surgery, general surgery, thoracic, colorectal, GYN, and urology**. We have 5 surgical robots and 1 orthopaedic robot.

Q. What are the biggest benefits of using surgical robotics today?

A. The benefit to the doctor and patient is better visualization, more precise surgery and fewer complications that can hopefully be better outcomes (yet to be proven). The benefits of being an early adopter of successful technology is a benefit to the hospital.

Q. How do you see these benefits evolving over the next 5 years?

A. There are a number of new features and technologies that could enhance the utility of robotic surgery in the coming years. For example, integration of **artificial intelligence, image guided surgery, and sensor technology** that can be built into the robot will lead to more robotic surgical autonomy and leave the human factors out of surgical skills and level the playing field. As you know, there are good mechanics and bad ones, good plumbers and bad ones, good doctors and bad ones. Hopefully, robotic technology will assist in preventing errors by preventing injury to normal organs while removing disease.

Q. Imaging and sensor technologies still play a limited role in robotic surgery – how will that change?

A. A few examples include the potential to adjust energy levels depending on tissue density, evaluating the margins of cancer in a patient's body by scientifically "seeing" where the tumor ends and normal tissue begins. The latter will help to avoid over-excising normal tissue in order to eradicate cancerous tissue.

Q. What about 3D printing, is there a role there to customize treatment for the individual?

A. Absolutely!! Being able to "**print**" **your own customized replacement parts** will definitely occur. Orthopedics, Dental, Craniofacial replacements are already being done. Meshes for hernia repair and possibly organ replacement are already in development.

Q. How about artificial intelligence, do you see a future where surgeries can be semi-autonomous or even fully autonomous in some cases?

A. Absolutely too! As images are able to be imported into the robot, **the surgeon of the future will essentially be a computer programmer**. He/she will program the robot to excise the disease and replace the diseased part with a 3D printed replacement and the robot will excise and replace with fewer errors, more precision, and faster OR times than any human could ever do!!!! Sorry Medical Schools and training programs... have you ever heard of cars being assembled by robots???

Q. The market is currently dominated by one big player – how do you see the competitive landscape evolving over the next 5 years?

A. Over the next 5 years there will probably be 10 players in the surgical robotics market. Once this happens and the price of robotic surgery will equal laparoscopy. Laparoscopy will go away and become a thing of the past for historians only performing lectures on the "History of Minimally Invasive Surgery."

Orthopaedics

In the realm of orthopaedics, robotic technology has gained traction in recent years, as surgeons are using robots in some of the most common surgeries among the U.S. patient population – knee and hip replacements. We have previously highlighted that we see a compelling value proposition for robotics in the hip and knee replacement markets: in a number of clinical studies, robotic orthopaedic procedures have been shown to allow for shorter postoperative stays and improved alignment vs. conventional approaches (see our deep-dive for more information). While this has not yet been demonstrated to deliver significant long-term functional improvements, we believe that there is sufficient evidence to suggest that robotic orthopaedic surgery will likely deliver reduced hospitalization costs and reduced post-surgery complications in the medium term.

An interview with Dr. Michael Mont



For expert opinion on orthopaedics, we spoke with **Dr. Michael Mont**.

Q. Thank you for joining us, Michael. Why don't you start off by telling us about your background?

A. Thank you for having me. I am an orthopaedic surgeon and was Chairman of the Cleveland Clinic up until April last year and still participate with them in a research role as Associate Staff. I am currently at Lenox Hill Hospital in New York City and System Chief of Joint Replacement and Vice Chair of Strategic Operations of Orthopedics at Northwell Health.

Q. Can you tell us a bit about your involvement and general perspectives regarding orthopaedic robotics?

A. I was the Principal Investigator of the Cleveland Clinic arm of a multicenter prospective study of knee replacements, which so far has had extremely positive early results. In addition, I have been involved in multiple basic science (cadaver) and human clinical studies utilizing robotics **for both hip and knee replacements**. I believe robotic surgery is presently enhancing the field and has much more tremendous potential. It can help with pre-operative planning of cases, allow the performance of more accurate surgery, and aid surgeons in achieving **more accurate radiographic alignment**. By pre-operative help, I mean using x-rays and CT scans that help individualize surgery, and establish haptic boundaries intra-operatively, that the robotic-assistive device I use allows; the bone-cutting blades are contained and, in my opinion, this **reduces error and allows for safer surgery**. In addition, not to be minimized, these robotically-assisted surgeries are great research and **educational tools**.

Q. With all this progress, where do you think technological applications in surgery will be in 5 years?

A. I think procedures will be more individualized than they already are. At this pace, it is feasible to believe that technologies like **artificial intelligence**, further **advanced imaging**, and **3D printing** will start taking off in orthopaedics in the next 2 or 3 years, and by 5 years from now, we will certainly be in a landscape that is very different from what we are seeing today. We will see **AI in diagnostics, better feedback, cost-efficient 3D printing**, among other advancements.

Q. What will be the key competitive factors that separate winners from losers?

A. It all comes down to the level of evidence we have supporting quality. The robots that can build a strong case for their superiority for patients, surgeons, and hospitals will win out.

Q. How should we think about the role robotics can play in driving orthopaedic procedures from hospitals to outpatient settings?

A. Outpatient surgery is an existing and increasing trend in hip and knee replacement surgery –robotics will only help that. This technology is simply making things **more reliable, efficient, reproducible, and easier**.

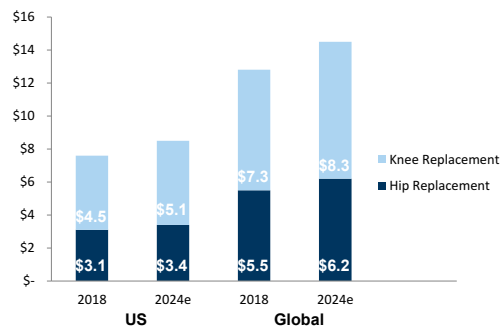
Q. What would it take for a hospital administrator to overrule a physician's aversion to robotics in the decision to buy a robot?

A. At the end of the day, **higher quality, improved outcomes** – which will lead to lower costs, will win out. Things can change rapidly in healthcare and I believe that improved patient-outcomes will always drive the acquisition of new technologies.

We estimate that there are approximately 700-800 orthopaedic robotic systems globally. We believe that robotics account for c.20% of all partial knee replacement procedures in the US, up from c.16% in 2015; however, penetration in total knee and total hip replacements still remains low – likely in the low-single digits – though we expect it to

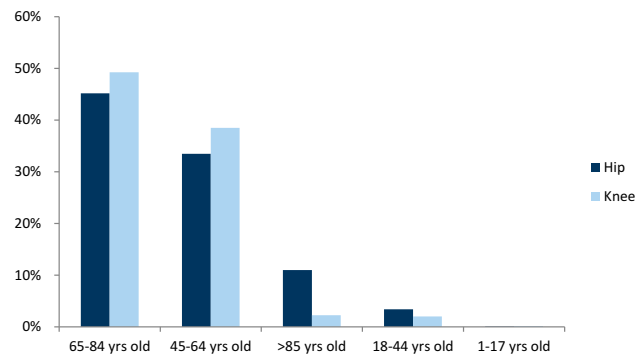
increase over the next 5-7 years, in particular as more companies bring solutions to market, and as the industry expands the range of procedures available on the robot.

Exhibit 4: US and Global orthopedics markets are likely candidates for significant displacement by robotic surgery
US and Global Orthopaedics Market Sizes (Billions)



Source: Company data, Goldman Sachs Global Investment Research

Exhibit 5: Hip and knee replacements are poised to benefit from an aging US population
% of US Procedures by Age Range



Source: company data, Company data, Goldman Sachs Global Investment Research

Spine

Current robotic surgery systems for spinal implants are very nascent with just a couple of entrants with first generation systems on the market that offer limited functionality. Key benefits currently include more accurate placement of pedicle screws, reduced pain for the patient, and real time verification of goals throughout the procedure. To date, the accuracy related benefits have been well documented but there is still insufficient clinical data that show the use of robotics in spinal surgery lead to improved outcomes. Future opportunities include “no-fly-zones” for surgeons, motion sensors, follower robots, and automation of simpler procedures.

An interview with Dr. Kade Huntsman



To learn more about spine and robotics, we invoke the insights of **Dr. Kade Huntsman**

Q. Tell us about your practice and what role surgical robotics currently play at your institution?

A. My practice is a Private practice, all orthopaedic surgeon partners and a few physiatrists, 16 MD's total, including 2 spine surgeons. We have about **5 surgeons** working in the hospital that perform spinal surgery. 3 of us use robotics and or guidance when instrumenting. St Marks is an HCA facility, part of the MountainStar system in Utah, Idaho and Alaska.

Q. What are the biggest benefits of using surgical robotics for spine today?

A. I have used stealth occasionally for many years, then the hospital purchased me a Globus Excelsius GPS system in October of 2017, and I have completed about 125 surgeries using this system. I trialed the Mazor around the time Medtronic made their first big investment in Mazor. Was not impressed because the Mazor product did not include navigation, ie stealth, and Medtronic has been attempting to get the 2 to communicate for the past 18 months.

I recently completed a study looking at speed and accuracy of me using **fluoroscopy alone versus Excelsius**. I was **more accurate and averaged 7 minutes faster** with Excelsius.

Biggest benefit is accuracy, particularly in my practice where I do a lot of single position lateral surgery cases. It is beneficial in **almost all pedicle screw cases**.

Q. How do you see these benefits evolving over the next 5 years?

A. In the next 5 years we should be able to advance the technology to place inter body cages, remove bone and soft tissue, and assist in all areas of spinal surgery, not just pedicle screw placement. I have reviewed the Nuvasive Pulse platform and will be moving from Globus to Pulse due to the ability to incorporate the Siemens Cios and neuromonitoring all into one platform. I love the concept, I also think they will be the leader in this area very soon, due to the software developments in Pulse that allow **neuromonitoring, navigation, robotics (coming soon), and preoperative and intraoperative spinal alignment, all in a single platform**.

Q. How do you see the competitive landscape evolving over the next 5 years?

A. Globus is a great system, and is the current leader, but is limited in the ability to move forward with procedures that are more complex than simple screw placement. Table mounted systems have serious limitations that cannot be overcome. The simplest is the table maximum weight is about 500 pounds, with obese patients using the 250 plus pounds of that, not much technology nor rigidity can be built into that system. They will all have to convert to floor mounted systems soon in order to maintain rigidity and increase the complexity of the procedures they can do.

Background

Background: Successful treatment was often dependent on selection of a “good surgeon” which is a highly qualitative and subjective process. With the advent of robotic surgery, surgical procedures have become more minimally invasive, more closely linked to technological advances in imaging/novel design of end effectors, and seen improved precision and patient outcomes. As a result, **robotic surgery has begun to democratize patient outcomes** particularly in routine categories such as prostatectomy and hysterectomy. While the magnitude of patient benefit and

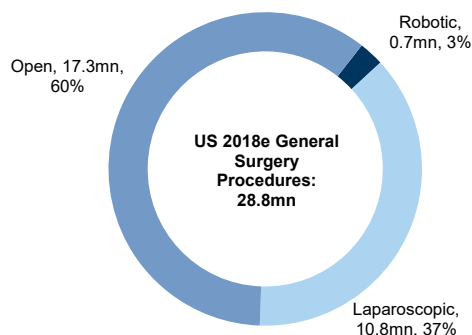
cost-effectiveness remains a hotly debated topic, we think these technologies will only improve over time both in terms of performance and cost-effectiveness.

Equally important, **robotic surgery has become a very effective marketing tool for hospitals** who adopt the technology. Many surgical procedures are important profit centers to a hospital which in turn created an incentive for early adopters to advertise these capabilities directly to patients in an attempt to portray the institution as a leading center of excellence for complex illnesses such as cancer.

We therefore believe the continued adoption of these technologies will have far-reaching implications for the business model around general surgery. For hospitals, **general surgery procedures are likely to remain key profit centers, making capital spending for value-add technologies a continued priority**. For physicians, the rise of robotics has **significant implications for hospital recruitment** of new physicians as training on these technologies now begins in medical school. For Med Tech companies, increased market **adoption of robotics also puts pressure on legacy business models** that are based on manual laparoscopic devices and commodity implants (knees/spine). These products are high margin and historically not linked to capital equipment. Robotic surgery systems generally have “razor/razorblade” based business models that threaten to capture these annuity streams.

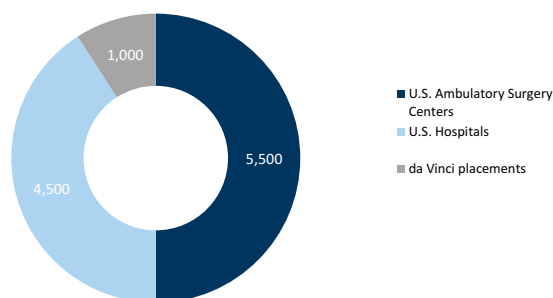
Where we are today:

Exhibit 6: Robotics have penetrated just 3% of procedures in the US

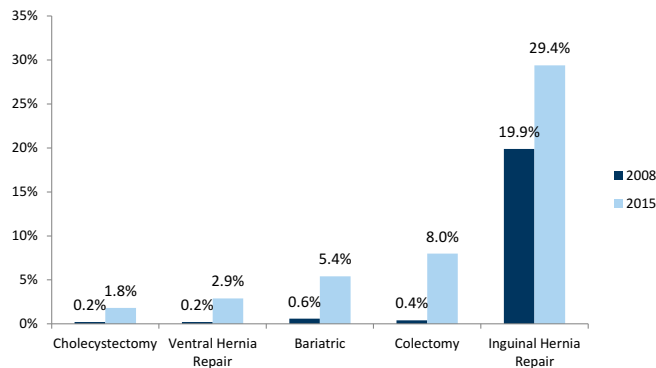


Source: US Census Bureau, Company data, Goldman Sachs Global Investment Research, National Center for Health Statistics

Exhibit 7: Opportunities for new US placements are still vast
Roughly 10,000 US hospitals do not have a surgical robot



Source: Titan Medical, American Hospital Association, Advanced Surgical Care, Goldman Sachs Global Investment Research

Exhibit 8: Robotic Surgery Penetration in General Surgery

Source: Company data, Goldman Sachs Global Investment Research, National Center for Biotechnology Information, University of Nebraska Medical Center

Appendix

Exhibit 9: Many of the largest Tech companies have expressed or launched Digital Health initiatives

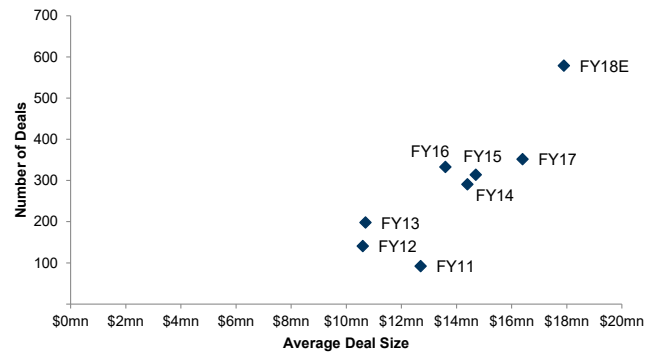
Sample of high profile announcements from major Tech companies

Company	Product/Service	Launched?	Description
AAPL	Apple Watch	Y	Includes FDA-approved electrocardiogram apps that allow for irregular heart rhythms that may not show up in a traditional medical exam.
AMZN	Genomics in the Cloud	Y	AWS offers an ecosystem for genomic data that allows for storage, collaboration, and analytics.
INTC	Echopixel	Y	Renders anatomy of patients using virtual reality formatting for the goal of increased clinical knowledge and faster operations.
GOOGL	Verily Life Science Algorithm	N	According to a study recently published in the Nature Biomedical Engineering Journal, a Google AI algorithm has predictive capability for cardiac events.
GOOGL	Verb Surgical (JNJ Collaboration)	N (Expected 2020)	A strategic partnership to advance surgical robotics to benefit patients, surgeons, and healthcare systems. JNJ has emphasized that this launch will be as much about "digital surgery" as robotics, distinguishing the terms as cognitive versus physical.
IBM	IBM Watson Care Manager	Y	Designed to help healthcare teams parse patient data, regulatory requirements, and create individualized healthcare plans.
MSFT	Airband Initiative (Radwin Partnership)	N (Expected 2019)	Initiative designed to address the "broadband gap" in rural communities, largely motivated by the desire to administer healthcare using telemedicine.
ORCL	Clear Trial Cloud Service	Y	Software that uses industry intelligence and clinical knowledge to optimize clinical study planning, sourcing, and deployment for R&D.

Source: Company data, Goldman Sachs Global Investment Research

Exhibit 10: VC deal size and frequency are increasing in Digital Health

Roughly 600 deals, nearly \$20mn on average



Source: Rock Health

Disclosure Appendix

Reg AC

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Japan-Pharmaceuticals: Astellas Pharma, Chugai Pharmaceutical, Daiichi Sankyo, Eisai, Healios, Kyowa Hakko Kirin, Ono Pharmaceutical, Otsuka Holdings, PeptiDream Inc., ReproCELL Inc., Santen Pharmaceutical, Sawai Pharmaceutical, Shionogi & Co., Taisho Pharmaceutical Holdings, Takeda Pharmaceutical.

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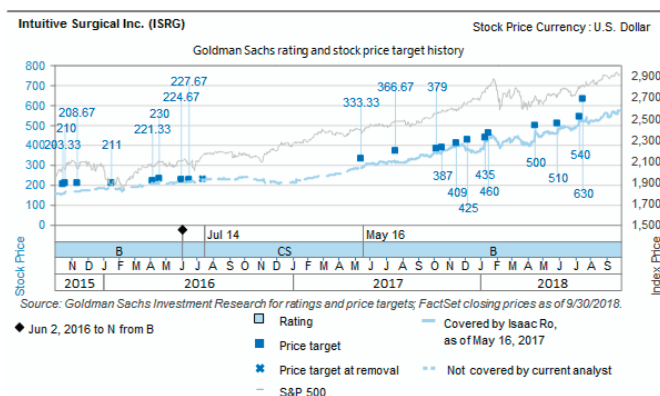
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EXHIBIT 13

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**



Deposition of:
Michael Madewell

June 11, 2021

In the Matter of:
**Restore Robotics LLC v Intuitive
Surgical**

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Restore Robotics LLC v Intuitive Surgical

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RESTORE ROBOTICS LLC,
RESTORE ROBOTICS REPAIRS LLC,
and CLIF PARKER ROBOTICS LLC,

Plaintiffs,

vs. CIVIL ACTION FILE
NO. 5:19-cv-55-TKW-MJF

INTUITIVE SURGICAL, INC.,
Defendant.

INTUITIVE SURGICAL, INC.,
Counterclaimant,

vs.
RESTORE ROBOTICS LLC,
RESTORE ROBOTICS REPAIRS LLC,

Counterclaim Defendants.

HIGHLY CONFIDENTIAL
VIDEO DEPOSITION OF MICHAEL MADEWELL
Taken by Remote Video Conference
June 11, 2021
1:00 P.M. Central Time

Laura M. MacKay, CCR-B-1736, RPR

Restore Robotics LLC v Intuitive Surgical

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25			25		

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<p style="text-align: right;">Page 18</p> <p>1 A. That's correct.</p> <p>2 Q. During -- during the almost five years of</p> <p>3 using the robots, have the uses on those instruments</p> <p>4 ever changed?</p> <p>5 A. That's the uses that they -- they have not.</p> <p>6 That's how they come from the manufacturer.</p> <p>7 Q. So let me ask it a different way. During</p> <p>8 your almost four years of using the da Vinci SI, has</p> <p>9 Intuitive ever changed the number of uses for those</p> <p>10 instruments?</p> <p>11 A. Not on these, no.</p> <p>12 Q. And has Intuitive changed the price for any</p> <p>13 of these instruments during your almost four years</p> <p>14 of using the da Vinci SI?</p> <p>15 A. No not on these.</p> <p>16 Q. Do you have a sense of how much that Panama</p> <p>17 City Surgery Center spends per year on the EndoWrist</p> <p>18 instruments?</p> <p>19 A. I don't. I would have to pull invoices.</p> <p>20 Probably 100,000.</p> <p>21 Q. Other than the --</p> <p>22 A. I would have to pull invoices. But we</p> <p>23 probably spend about \$100,000 a year.</p> <p>24 Q. Other than the --</p> <p>25 MR. BERHOLD: Let's take down Exhibit 4,</p>	<p style="text-align: right;">Page 20</p> <p>1 A. We couldn't afford it.</p> <p>2 Q. So you've gone to time and materials?</p> <p>3 A. We have.</p> <p>4 Q. Do you have a sense of how much that Panama</p> <p>5 City Surgery Center is now spending on time and</p> <p>6 materials for service for the da Vinci SI per year?</p> <p>7 A. So we -- we spend \$10,000 for the -- we</p> <p>8 have to have the PMs done twice a year, and that</p> <p>9 costs us \$10,000 for the technician to come out and</p> <p>10 do the -- basically go through it and do a six-month</p> <p>11 inspection.</p> <p>12 And then we've -- we haven't had to use</p> <p>13 service until just this last year. We had to have a</p> <p>14 technician come out of Tallahassee just to drive</p> <p>15 over and set up a new IP address to go through our</p> <p>16 new security system that we got. And so we were --</p> <p>17 we were invoiced for that.</p> <p>18 Q. Oh, and how much did that cost?</p> <p>19 A. Well, they quoted us \$5,000. \$995 per hour</p> <p>20 travel time and then -- which was two hours over and</p> <p>21 two hours back. So \$4,000 for the technician to</p> <p>22 drive over. And an estimated \$995 per hour for him</p> <p>23 to change the IP address in the system so that we</p> <p>24 could route it through our security plan.</p> <p>25 Now, we negotiated that down, but that was</p>
<p style="text-align: right;">Page 19</p> <p>1 please, Bailey. Can we pull up the document</p> <p>2 labelled "Service Invoice."</p> <p>3 CONCIERGE TECH: This is Exhibit 5.</p> <p>4 (Exhibit 5 marked.)</p> <p>5 BY MR. BERHOLD:</p> <p>6 Q. Mr. Madewell, can you see Exhibit 5 on your</p> <p>7 screen?</p> <p>8 A. I can.</p> <p>9 Q. Do you happen to recognize Exhibit 5?</p> <p>10 A. I do.</p> <p>11 Q. What is Exhibit 5?</p> <p>12 A. It's an invoice for prepaid service. It's</p> <p>13 like a warranty plan.</p> <p>14 Q. And generally speaking, what are the terms</p> <p>15 for the service plan in this invoice?</p> <p>16 A. Well, for us, after the service on the</p> <p>17 machine for the first year was covered. After that,</p> <p>18 we had agreed on \$100,000 per year, which would</p> <p>19 cover two annual service inspections. And then</p> <p>20 certain -- certain repairs were covered under that</p> <p>21 if we had to have repairs for the machine.</p> <p>22 Q. Is Panama City Surgery Center still on a</p> <p>23 service plan?</p> <p>24 A. No, we are not.</p> <p>25 Q. Why not?</p>	<p style="text-align: right;">Page 21</p> <p>1 the initial offer -- or the initial quote for the</p> <p>2 service.</p> <p>3 Q. What was the final price?</p> <p>4 A. I would have to go back and look at the</p> <p>5 invoice. It was about half that.</p> <p>6 MR. BERHOLD: Bailey, can you take down</p> <p>7 Exhibit 5.</p> <p>8 BY MR. BERHOLD:</p> <p>9 Q. Mr. Madewell, do you know someone by the</p> <p>10 name of Clif Parker?</p> <p>11 A. I do.</p> <p>12 Q. How long have you known Mr. Parker?</p> <p>13 A. Six or seven years.</p> <p>14 Q. How did you first meet Mr. Parker?</p> <p>15 A. I think I first met Mr. Parker when he --</p> <p>16 we had scheduled a meeting. He's got a 3D scope</p> <p>17 that -- that his company was working on. And he</p> <p>18 brought it over to demo it for a few of our</p> <p>19 physicians. I think that was the first time.</p> <p>20 Q. Has Panama City Surgery Center had any</p> <p>21 business dealings with Mr. Parker or any of his</p> <p>22 companies?</p> <p>23 A. We have.</p> <p>24 Q. And for what have you -- for what has</p> <p>25 Panama City Surgery Center done business with</p>

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 22</p> <p>1 Mr. Parker or any of his companies?</p> <p>2 A. Primarily we have used Restore Robotics to</p> <p>3 repair the Endo instruments for the da Vinci robot.</p> <p>4 MR. BERHOLD: Bailey, can we pull up a</p> <p>5 document entitled "First Repair."</p> <p>6 CONCIERGE TECH: This is Exhibit 6.</p> <p>7 (Exhibit 6 marked.)</p> <p>8 BY MR. BERHOLD:</p> <p>9 Q. Mr. Madewell, can you see Exhibit 6 on your</p> <p>10 screen?</p> <p>11 A. I can.</p> <p>12 Q. Do you recognize Exhibit 6?</p> <p>13 A. Looks like an e-mail that I sent to</p> <p>14 Clif Parker.</p> <p>15 Q. Do you have any recollection of sending the</p> <p>16 e-mail?</p> <p>17 A. Yes.</p> <p>18 Q. And, generally, what was the purpose of the</p> <p>19 e-mail?</p> <p>20 A. To see if his company was going to be able</p> <p>21 to reprocess or repair this instrument.</p> <p>22 Q. Was this the first time that you had</p> <p>23 requested that Mr. Parker repair one of the</p> <p>24 EndoWrists?</p> <p>25 A. I don't know if this was the first time.</p>	<p style="text-align: right;">Page 24</p> <p>1 could reprocess or repair these instruments and save</p> <p>2 money on those, then -- much like a lot of</p> <p>3 instruments that we send out for reprocessing,</p> <p>4 whether they're single use or multi-use, if they can</p> <p>5 be reprocessed and used again at a lower cost, then</p> <p>6 we do that.</p> <p>7 And so we do that with at a lot of our</p> <p>8 instruments. Just like if we need instruments that</p> <p>9 need repair, we send them out for repair versus</p> <p>10 throwing them out and buying a new one. So that was</p> <p>11 the idea behind using Clif's company to repair or</p> <p>12 reprocess these instruments.</p> <p>13 MR. BERHOLD: Bailey, can you pull down</p> <p>14 Exhibit 6.</p> <p>15 BY MR. BERHOLD:</p> <p>16 Q. Mr. Madewell, did you consult with any of</p> <p>17 the robotic surgeons before you started to repair</p> <p>18 EndoWrist instruments with Restore Robotics?</p> <p>19 A. I did.</p> <p>20 Q. Okay. And what did they tell you?</p> <p>21 A. They said if the instruments worked fine,</p> <p>22 they were happy with it. My surgeons know that we</p> <p>23 have reprocessed instruments in the building, and</p> <p>24 their attitude has always been if the instrument</p> <p>25 works, we'll use it.</p>
<p style="text-align: right;">Page 23</p> <p>1 It looks like it, since I'm asking him what the</p> <p>2 process is for sending it in.</p> <p>3 Q. And why were you considering having Panama</p> <p>4 City Surgery Center repair EndoWrist instruments?</p> <p>5 MR. BAILEY: Objection to form. Misstates</p> <p>6 testimony and the document.</p> <p>7 BY MR. BERHOLD:</p> <p>8 Q. You can answer the question if you</p> <p>9 understand it, Mr. Madewell.</p> <p>10 A. I understand the question. I don't</p> <p>11 understand that -- what was just said.</p> <p>12 But the reasons? Primarily because we had</p> <p>13 instruments that -- you know, in our line of work,</p> <p>14 you don't throw out something that works perfectly</p> <p>15 fine. You just can't afford to.</p> <p>16 And the second thing is, as we looked at</p> <p>17 the viability of our da Vinci program, for the same</p> <p>18 reason that we chose to go on time and materials,</p> <p>19 because we could not afford -- when you break down</p> <p>20 the volume we were doing and what we get paid per</p> <p>21 patient to do robotic surgery, we were looking at</p> <p>22 our margins are in the tens to hundreds of dollars,</p> <p>23 not the thousands of dollars. And so we were</p> <p>24 looking at every opportunity we could find to lower</p> <p>25 the cost of doing these surgeries. And so if we</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And did the repaired EndoWrist instruments</p> <p>2 work fine?</p> <p>3 A. Yes.</p> <p>4 MR. BAILEY: Objection to form.</p> <p>5 BY MR. BERHOLD:</p> <p>6 Q. Did you ever get any complaints from</p> <p>7 doctors about the functioning of the repaired</p> <p>8 EndoWrist instruments?</p> <p>9 MR. BAILEY: Objection to form.</p> <p>10 A. No.</p> <p>11 BY MR. BERHOLD:</p> <p>12 Q. Are you still using -- are you still using</p> <p>13 Restore Robotics repairs to repair EndoWrist</p> <p>14 instruments for Panama City Surgery Center?</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. I was served a notice by Intuitive that I</p> <p>18 was in violation of the licensing agreement. And if</p> <p>19 I continued to do that, then they would cancel that</p> <p>20 licensing agreement. And cancellation of the</p> <p>21 licensing agreement meant no longer supporting the</p> <p>22 software that runs the robot, which at some point</p> <p>23 would -- the robot would not work.</p> <p>24 MR. BERHOLD: Bailey, can we pull up a</p> <p>25 document titled "Warning Letter."</p>

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<p style="text-align: right;">Page 26</p> <p>1 CONCIERGE TECH: This is Exhibit 7. 2 (Exhibit 7 marked.) 3 BY MR. BERHOLD: 4 Q. Mr. Madewell, can you see Exhibit 7 on your 5 screen? 6 A. I can. 7 Q. Can you take a look at Exhibit 7 to see if 8 you recognize it? 9 A. Yeah, it looks like the letter that I was 10 sent. 11 Q. And who sent the letter? 12 A. Intuitive. 13 Q. And what was your understanding of what 14 Intuitive is saying in this letter in a nutshell? 15 A. Stop -- stop reprocessing the instruments 16 or I would be in violation of the licensing 17 agreement and they could turn the machine off. 18 Q. And did Intuitive eventually terminate its 19 agreement with Panama City Surgery Center? 20 A. They did. 21 MR. BAILEY: Object to form. 22 MR. BERHOLD: Bailey, can you take down 23 Exhibit 7 and pull up document titled "Contract 24 Termination." 25 CONCIERGE TECH: This is Exhibit 8.</p>	<p style="text-align: right;">Page 28</p> <p>1 know if you recognize it? 2 A. I do. 3 Q. Can you just walk us through the sequence 4 of e-mails here in Exhibit 9. 5 A. It was the communication that I had with -- 6 I guess I'm not sure exactly what Matt's title was, 7 the regional guy about the cancellation letter that 8 I got reaching out to their reps and to Matt, who is 9 the -- and say look, you guys have known our issue, 10 we've had -- we've used a few reprocessed 11 instruments and tiny compared to all of the new ones 12 we bought but we did get the letter of cancellation 13 and so I was basically saying, look, you got me over 14 a barrel here. I agree to quit using it. I don't 15 want the machine to be turned off. We certainly 16 don't want the patients to go back to the hospital 17 to have these cases done. And, you know, let's get 18 a new contract in place. 19 And I copied my physicians so that they 20 were aware of all of these communications. Those 21 are the extra names you see in the e-mails. 22 Q. And did Panama City Surgery Center agree 23 that it would not repair any more EndoWrist 24 instruments? 25 A. We did.</p>
<p style="text-align: right;">Page 27</p> <p>1 (Exhibit 8 marked.) 2 BY MR. BERHOLD: 3 Q. Mr. Madewell, can you see Exhibit 8 on your 4 screen? 5 A. I can. 6 Q. Do you recognize Exhibit 8? 7 A. Yes. 8 Q. What is Exhibit 8? 9 A. It's the letter notifying me that our 10 agreement with Intuitive had been terminated. 11 Q. And what was your understanding of why 12 Intuitive had terminated the agreement? 13 A. Because I was sending off the instruments 14 to be reprocessed or to have the chip reset so we 15 could use them more than ten times. 16 MR. BERHOLD: Bailey, can you take down 17 Exhibit 8, and can you pull up the document entitled 18 "Dialog." 19 CONCIERGE TECH: This is Exhibit 9. 20 (Exhibit 9 marked.) 21 BY MR. BERHOLD: 22 Q. Mr. Madewell, can you see Exhibit 9 on your 23 screen? 24 A. Yes. 25 Q. Can you take a look at Exhibit 9 and let me</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. And has Panama City Surgery Center abided 2 by that agreement with Intuitive not to repair the 3 EndoWrist instruments? 4 A. We have. 5 MR. BERHOLD: Bailey, can you take down the 6 exhibit. 7 BY MR. BERHOLD: 8 Q. Mr. Madewell, did you have any 9 understanding of how Intuitive knew that Panama City 10 Surgery Center was repairing its EndoWrist 11 instruments in the first place? 12 A. The robot is connected to wifi and sends 13 out signals, or reports I guess, up to Intuitive 14 where they monitor -- monitoring error codes. It's 15 also a way for them to be able to log in and 16 troubleshoot the software. 17 And it was through those reports that I 18 guess the serial numbers on those individual 19 instruments, when they were in their eleventh or 20 twelfth use, I'm sure it raised a red flag somewhere 21 and that's how they found out. 22 MR. BERHOLD: Bailey, can we pull up the 23 document labelled -- let me give you the Bates 24 number. It's HC_000021. 25 CONCIERGE TECH: This is Exhibit 10.</p>

EXHIBIT 14

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**



Deposition of:
AEO 30(b)(6) Clifton Earl Parker
May 4, 2021

In the Matter of:
**Restore Robotics LLC v Intuitive
Surgical**

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ATTORNEYS' EYES ONLY

1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RESTORE ROBOTICS LLC and
RESTORE ROBOTICS REPAIRS
LLC,

CIVIL ACTION FILE

Plaintiffs,

NO. 5:19-cv-55-TKW-MJF

vs.

INTUITIVE SURGICAL, INC.,
Defendant.

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REMOTE VIDEO 30(b)(6) DEPOSITION OF  
RESTORE ROBOTICS LLC  
and  
RESTORE ROBOTICS REPAIRS LLC  
THROUGH  
CLIFTON "CLIF" EARL PARKER  
AND  
CLIFTON "CLIF" EARL PARKER, INDIVIDUALLY

May 4, 2021

9:59 a.m.

7506 Holly Circle  
Panama City Beach, Florida

S. Julie Friedman, CCR-B-1476

Restore Robotics LLC v Intuitive Surgical

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ATTORNEYS' EYES ONLY

2

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Also Present:

Chris McMillan, Concierge Tech

Alan Pokotilow, Videographer

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Exhibit Description Page

Exhibit 7 E-mail Chain Ending with 2/22/2020 7:14:49 PM E-mail, from Parker, to Cordially, Bruce McDaniel, Subject: Re: Davinci Si and DaVinci S services, CONFIDENTIAL, Restore-00056351 244

(Original Exhibits 1 through 7 have been attached to the original transcript.)

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INDEX OF EXAMINATIONS

2 WITNESS:

Clifton "Clif" Earl Parker

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CROSS-EXAMINATION 6

By Mr. Ruby

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Exhibit Description Page

Exhibit 1 6/20/2019 9:06:26 AM E-mail, from Parker, to Colletti and Sheehy, Subject: FAQ doc, HIGHLY CONFIDENTIAL, Restore-00002649-2653 67

Exhibit 2 11/30/2018 11:53:54 AM E-mail, from Parker, to Winkler, Subject: Restore Robotics, CONFIDENTIAL, Restore-00022922-22927 75

Exhibit 3 Sunday, June 23, 2019 9:11 PM E-mail, from Colletti, to Parker, Czajka, Subject: Ac promo 2019\_momentumsRobotics2.pptx, HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY, 0040518-40544 86

Exhibit 4 8/11/2019 1:46:00 PM E-mail, from Hansen, to Vautrot and Parker, Subject: Preowned EndoWrist Discrepancies, CONFIDENTIAL, Restore-00030210-30215 147

Exhibit 5 10/12/2018 8:28:24 AM E-mail, from Parker, to billing@reach3d.net, Subject: Brochures, CONFIDENTIAL, Restore-00018745-18746 161

Exhibit 6 5/14/2019 7:12:27 PM E-mail, from Parker, to Mixner, Subject: Restore Robotics Repairs response, CONFIDENTIAL, Restore-00005217-5219 189

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THE VIDEOGRAPHER: We're on the record.

The time is now 9:59 a.m. Today is Tuesday, May 4th of 2021. We're here today at Restore Robotics, LLC, located at 7506 Holly Circle in Panama City Beach, Florida, for the videotape deposition of Clifton Parker, in the Matter of Restore Robotics LLC and Restore Robotics Repairs LLC versus Intuitive Surgical, Incorporated, counterclaim, Intuitive Surgical, Incorporated versus Restore Robotics LLC and Restore Robotics Repairs LLC, Civil Case No. 519-cv-55-TKW-MJF, to be heard In the United States District Court, For the Northern District of Florida, Panama City Division.

Our court reporter today is Julie Friedman here today on behalf of Veritext Legal Solutions. I'm Alan Pokotilow, a legal videographer, also here today on behalf of Veritext Legal Solutions.

Our court reporter will read a brief stipulation, and then swear the witness; and we can proceed.

THE COURT REPORTER: Due to the need for this deposition to take place remotely because of the Government's order for social distancing,



Restore Robotics LLC v Intuitive Surgical

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| <p style="text-align: right;">Page 94</p> <p>1 requisite tests.</p> <p>2 Q. And were these tests that you referred to</p> <p>3 tests that were developed by whom?</p> <p>4 A. I don't know who physically developed</p> <p>5 them.</p> <p>6 Q. Well, did you have any idea -- Well,</p> <p>7 strike that.</p> <p>8 Did Restore Robotics develop tests for the</p> <p>9 efficacy of the software on the da Vinci surgical</p> <p>10 system?</p> <p>11 A. No.</p> <p>12 Q. The tests you're referring to were tests</p> <p>13 developed by Intuitive; isn't that right?</p> <p>14 A. I'm assuming so, but I -- I'm not aware</p> <p>15 of who actually developed the test. Was it a third</p> <p>16 party, or was it Intuitive directly, Intuitive</p> <p>17 employees?</p> <p>18 I don't know.</p> <p>19 Q. Well, did you have any belief one way or</p> <p>20 the other whether Restore Robotics could lawfully</p> <p>21 gain access to the testing methods developed by</p> <p>22 Intuitive Surgical once you hired a -- a former</p> <p>23 Intuitive Surgical employee?</p> <p>24 A. I mean, you -- Are you asking me for a</p> <p>25 legal conclusion, 'cause I don't think I'm prepared</p>                                                                                                                            | <p style="text-align: right;">Page 96</p> <p>1 learned to perform preventative maintenance on a</p> <p>2 robot owned by a hospital.</p> <p>3 Q. Oh. In -- in -- In all the time that</p> <p>4 Restore Robotics and -- and its affiliated companies</p> <p>5 offered the service of preventive maintenance as set</p> <p>6 out in the slide, how much money came into your</p> <p>7 companies as a result of that service?</p> <p>8 A. Just for preventive maintenance?</p> <p>9 Q. Yes.</p> <p>10 A. 600. Between 600- and \$700,000.</p> <p>11 Q. And then how much -- The next item, the</p> <p>12 next bullet point is "Surgical robot repair."</p> <p>13 Did -- Did your company and affiliated</p> <p>14 companies working with you actually repair some</p> <p>15 da Vinci surgical systems?</p> <p>16 A. We did.</p> <p>17 Q. Did you ever need spare parts in order to</p> <p>18 accomplish these repairs?</p> <p>19 A. Yes.</p> <p>20 Q. Where did you get them?</p> <p>21 A. Some of them, we were able to obtain</p> <p>22 directly from the original manufacturers, so</p> <p>23 Intuitive did not manufacture every component. They</p> <p>24 purchased components from other manufacturers, and so</p> <p>25 we were able to purchase those from those companies.</p> |
| <p style="text-align: right;">Page 95</p> <p>1 to -- to do that.</p> <p>2 Q. No. I would -- I -- I have not asked you</p> <p>3 for a legal conclusion.</p> <p>4 A. Okay. Can you restate the question then.</p> <p>5 Q. Sure. At the time that Restore Robotics</p> <p>6 was apparently conducting some tests on the da Vinci</p> <p>7 surgical system using tests, testing methods</p> <p>8 developing by Intuitive, did you have in your mind</p> <p>9 any idea whether it was lawful for Restore to do</p> <p>10 that?</p> <p>11 A. To perform tests on a robot owned by a</p> <p>12 hospital that they asked us to do, yeah. That's</p> <p>13 totally lawful.</p> <p>14 Q. I'm asking you about whether you had an</p> <p>15 opinion. Maybe you did. Maybe you didn't. That's</p> <p>16 why I'm asking.</p> <p>17 Did you have an opinion at the time</p> <p>18 whether Restore Robotics could lawfully use and</p> <p>19 charge for the use of testing methods developed by</p> <p>20 Intuitive Surgical?</p> <p>21 A. Again, I think you're asking me for a</p> <p>22 legal conclusion. I -- I personally believe that by</p> <p>23 hiring those former Intuitive engineers, they were</p> <p>24 using what they learned. I do not believe that that</p> <p>25 would be against the law for them to use what they</p> | <p style="text-align: right;">Page 97</p> <p>1 Q. But not from Intuitive?</p> <p>2 A. No.</p> <p>3 Q. And how much money came into your company</p> <p>4 or companies from the surgical robot repair?</p> <p>5 A. I don't recall the -- the amount. I would</p> <p>6 say less than a million dollars, but I don't know the</p> <p>7 exact amount.</p> <p>8 Q. Well, can you approximate without guessing</p> <p>9 how much money came into your company or companies</p> <p>10 for surgical robot repair?</p> <p>11 A. No. I cannot approximate without</p> <p>12 guessing. That -- I think that is a guess.</p> <p>13 I would -- I would say between a hundred</p> <p>14 and 300,000, but I don't know.</p> <p>15 Q. The next bullet point on here is "On-site</p> <p>16 time guarantees."</p> <p>17 What -- What does that mean?</p> <p>18 A. A minimum amount of time before a</p> <p>19 technician will arrive on time -- on site, so</p> <p>20 basically, we said, you know, we'll provide you</p> <p>21 24-hour response or 48-hour response, that a</p> <p>22 technician will be on site within that amount of</p> <p>23 time.</p> <p>24 Q. The next item is "Technical help desk."</p> <p>25 Do you see that?</p>                                                           |

25 (Pages 94 - 97)



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| <p style="text-align: right;">Page 98</p> <p>1 A. Yes.</p> <p>2 Q. What does that refer to?</p> <p>3 A. I'm sorry. Repeat the question.</p> <p>4 Q. What does "Technical help desk" refer to?</p> <p>5 A. Oh, the ability for the hospital to call</p> <p>6 and to speak directly with one of our field service</p> <p>7 engineers.</p> <p>8 Q. And what was the days and hours of access</p> <p>9 to the technical help desk that was provided by</p> <p>10 Restore?</p> <p>11 A. It depended on the contract. I'd have to</p> <p>12 see each individual contract. It was a negotiated</p> <p>13 process.</p> <p>14 Q. Did you charge for this service?</p> <p>15 A. Yes. We did.</p> <p>16 Q. How much?</p> <p>17 A. For -- For phone support, I believe it</p> <p>18 was \$350 an hour. For on-site support, was \$450 per</p> <p>19 hour.</p> <p>20 Q. Did -- Wait. We withdraw that.</p> <p>21 Then the next section on here is "Parts</p> <p>22 inventory."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. What does that refer to?</p>                                                                                                                                                            | <p style="text-align: right;">Page 100</p> <p>1 but when Intuitive started putting up severe</p> <p>2 roadblocks, they were unable to continue doing</p> <p>3 business with us, so we were never able to continue</p> <p>4 those programs.</p> <p>5 Q. And -- And who were those prospective</p> <p>6 customers you say were -- were -- that were going to</p> <p>7 sign but didn't because of something Intuitive did?</p> <p>8 A. Oh, there were lots of them. The -- The</p> <p>9 first one was Baylor Scott &amp; White. Panama City</p> <p>10 Surgery Center.</p> <p>11 They were numerous, numerous. I'd have to</p> <p>12 look at a list to -- to tell you who all they were.</p> <p>13 Indiana University.</p> <p>14 Q. We're not in a hurry, Mr. Parker. I'd</p> <p>15 like to know please the names of companies or</p> <p>16 institutions, businesses which you say would have</p> <p>17 signed up for one or more of these products or</p> <p>18 services from Restore or its affiliated companies</p> <p>19 if -- if Intuitive had not done something.</p> <p>20 And we've got Baylor, et cetera, Panama</p> <p>21 City, Indiana University. Who else is there?</p> <p>22 A. There's literally dozens and dozens. I</p> <p>23 have to go look at a list, so I'd have to pull up a</p> <p>24 list of those potential customers. I don't have that</p> <p>25 in front of me.</p> |
| <p style="text-align: right;">Page 99</p> <p>1 A. We maintained a number of parts in stock.</p> <p>2 Q. And -- And where did you get them from?</p> <p>3 A. Some of them, we purchased directly from</p> <p>4 the original equipment manufacturer. Some of them,</p> <p>5 we purchased from other hospitals.</p> <p>6 Q. Did you purchase any of them from</p> <p>7 Intuitive?</p> <p>8 A. No.</p> <p>9 Q. The last item on here is -- is "Clinical</p> <p>10 support training."</p> <p>11 What -- What does that refer to?</p> <p>12 A. Oh, basically, it's training their</p> <p>13 clinical staff on the use of the -- the robot by our</p> <p>14 field service engineers. Not on -- on medical</p> <p>15 procedures, but on the use of the robot.</p> <p>16 Q. And -- And you charged for that service;</p> <p>17 is that right?</p> <p>18 A. Yes.</p> <p>19 Q. How -- How much money came into your</p> <p>20 companies all told from your clinical support</p> <p>21 training?</p> <p>22 A. I don't know that we ever did that.</p> <p>23 Q. So it was -- it was a service you offered,</p> <p>24 but nobody took you up on the offer; is that true?</p> <p>25 A. A couple were interested in that offer;</p> | <p style="text-align: right;">Page 101</p> <p>1 I can gather it, if you'd like.</p> <p>2 Q. Well, I'd like you to answer my question.</p> <p>3 If you tell me you can't beyond Baylor -- and I know</p> <p>4 there were some other names after Baylor in that same</p> <p>5 cohort -- Panama City, and Indiana University.</p> <p>6 Sitting here now, can you tell me any</p> <p>7 others?</p> <p>8 A. Pacific Coast Surgery Center.</p> <p>9 Lowell. Of --</p> <p>10 There's some in Louisiana and New Orleans.</p> <p>11 Conway Regional Medical Center.</p> <p>12 There's one in Jackson, Tennessee. I</p> <p>13 think it's Jackson General Hospital.</p> <p>14 West Virginia University.</p> <p>15 I have to look at a list, or I can keep</p> <p>16 thinking about it.</p> <p>17 Q. What product or service do you say that</p> <p>18 Indiana University was likely to sign up for with</p> <p>19 Restore?</p> <p>20 A. Instrument repair, as well as robotic</p> <p>21 service.</p> <p>22 Q. Instrument repair was the installation of</p> <p>23 the interceptor technology?</p> <p>24 A. That's correct.</p> <p>25 Q. And -- And what else did you say that</p>                                                                                                                                                                                                                      |

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| <p style="text-align: right;">Page 102</p> <p>1 Indiana University was ready to sign up for?</p> <p>2 A. Robotic preventative maintenance and</p> <p>3 service of the Si robots.</p> <p>4 Q. And who were you dealing with at Indiana</p> <p>5 University?</p> <p>6 A. This was done through a distributor, but</p> <p>7 the gentleman there was the -- I can't remember his</p> <p>8 name off the top of my head. I can't remember his</p> <p>9 name.</p> <p>10 Q. What product or service do you say that</p> <p>11 West Virginia University was ready to sign up for?</p> <p>12 A. I know it was instrument repair; and then,</p> <p>13 also, when they made a decision to go to Xi, they</p> <p>14 were interested in selling us their Si instruments.</p> <p>15 Q. Who were you dealing with at West Virginia</p> <p>16 University?</p> <p>17 A. I didn't deal directly with West Virginia.</p> <p>18 I dealt with a distributor, OCS.</p> <p>19 Q. So you don't know who -- who it was at</p> <p>20 West Virginia University that was interested in -- in</p> <p>21 your offerings?</p> <p>22 A. No. I did not have a personal</p> <p>23 conversation.</p> <p>24 Q. At any time that Restore Robotics was</p> <p>25 offering the -- to install the interceptor</p>                                                                                       | <p style="text-align: right;">Page 104</p> <p>1 A. Distributors and representatives, yes.</p> <p>2 Q. And for purposes of the vocabulary you use</p> <p>3 in this regard, is a distributor and a rep the same</p> <p>4 thing?</p> <p>5 A. No.</p> <p>6 Q. How are they different?</p> <p>7 A. The rep would sell the product and service</p> <p>8 to the hospital through Restore Robotics, so Restore</p> <p>9 Robotics would bill the end customer and pay the rep</p> <p>10 a commission; whereas the distributor, we would</p> <p>11 provide them a transfer price; and they would mark it</p> <p>12 up and sell directly to the customer. They would</p> <p>13 bill the customer.</p> <p>14 Q. Did Restore Robotics utilize the -- the</p> <p>15 sales and marketing services of both reps and</p> <p>16 distributors, as you've defined them?</p> <p>17 A. Yes.</p> <p>18 Q. Was there a -- a -- a greater number of</p> <p>19 one or the other; that is, did -- Were there more</p> <p>20 reps than distributors or more distributors than rep,</p> <p>21 or were they about the same in terms of utilization</p> <p>22 by Restore?</p> <p>23 A. There were physically more separate rep</p> <p>24 entities. The distributors, I believe there were</p> <p>25 only two of those; but they employed many</p> |
| <p style="text-align: right;">Page 103</p> <p>1 technology, did Restore Robotics have any sales</p> <p>2 personnel on its payroll?</p> <p>3 A. Not as payrolled employees. No.</p> <p>4 Q. No full-time salespeople employed by the</p> <p>5 company; is that right?</p> <p>6 A. Not employees. So myself and Mills and</p> <p>7 Kevin May performed some of those functions, the</p> <p>8 majority of them by me; but our main focus was to</p> <p>9 bring on distributors to do the selling.</p> <p>10 Q. Okay. And -- And I'll be asking about</p> <p>11 distributors; but for now, I just want to be sure I</p> <p>12 understand. There were no salespeople whose job was</p> <p>13 just to sell the products and services of Restore</p> <p>14 Robotics on the payroll, the W-2 payroll; is that</p> <p>15 right?</p> <p>16 A. That's correct. That's correct.</p> <p>17 Q. Were there any sales personnel whose job</p> <p>18 it was to sell the products and services of Restore</p> <p>19 Robotics or Restore Robotics Repair on the payroll of</p> <p>20 any affiliated company with Restore Robotics?</p> <p>21 A. Not as employees. No.</p> <p>22 Q. Okay. Was the business model that you</p> <p>23 wanted to pursue a business model where the sales</p> <p>24 effort would be carried out principally by what</p> <p>25 you're calling reps?</p> | <p style="text-align: right;">Page 105</p> <p>1 salespeople.</p> <p>2 Q. How many reps were there?</p> <p>3 A. Between 75 and 85.</p> <p>4 Q. Was that -- Did you have reps both in the</p> <p>5 United States and in Europe?</p> <p>6 A. Well, Europe was a distributor as well --</p> <p>7 as well as other countries, so outside the U.S. was</p> <p>8 strictly distributors. Inside the U.S. was a</p> <p>9 combination of reps and distributors.</p> <p>10 Q. What was the largest amount that was paid</p> <p>11 for sale -- goods or services connected with the</p> <p>12 da Vinci system to any rep?</p> <p>13 A. Oh, I don't -- I don't know.</p> <p>14 Q. Was it more or less than a million</p> <p>15 dollars?</p> <p>16 A. Less.</p> <p>17 Q. Is it more or less than half a million</p> <p>18 dollars?</p> <p>19 A. Less. I'm sure.</p> <p>20 Q. Was it more or less than a hundred</p> <p>21 thousand dollars?</p> <p>22 A. I don't know the answer.</p> <p>23 Q. All told, how much were paid in</p> <p>24 commissions to all the reps total that were deployed</p> <p>25 by Restore and its affiliated companies to sell</p>                                                                                                                                                                      |

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| <p style="text-align: right;">Page 106</p> <p>1 products and services related to the da Vinci robotic<br/>                 2 system?<br/>                 3 A. I don't have that number handy.<br/>                 4 Q. Can you estimate.<br/>                 5 A. With -- No. I -- I just don't know.<br/>                 6 Q. You -- You used the figure of 75 reps, I<br/>                 7 think, earlier. Were there as many as 75 reps<br/>                 8 deployed by Robotics -- Robotics -- Strike that.<br/>                 9 Were there as many as 75 reps deployed by<br/>                 10 Restore Robotics at any one time?<br/>                 11 A. Probably.<br/>                 12 Q. Was it your experience that reps would<br/>                 13 come and go? Some would sign on for a while; and<br/>                 14 then either because they weren't productive or for<br/>                 15 some other reason, would sort of drop out?<br/>                 16 A. Well, the reason we lost reps was due to<br/>                 17 the actions of Intuitive Surgical, which is the<br/>                 18 reason we're here today.<br/>                 19 So they would approach the hospitals. The<br/>                 20 hospitals would be very excited. Very interested in<br/>                 21 the program. Want to pursue things.<br/>                 22 And then they started getting threats and<br/>                 23 pushback from Intuitive, you know, telling them that<br/>                 24 they would lose access to service. They would not be<br/>                 25 able to buy, you know, disposables. They would not</p>                                                                               | <p style="text-align: right;">Page 108</p> <p>1 become customers; or they would lose them as a<br/>                 2 protected account.<br/>                 3 Q. Did the distributors have quotas?<br/>                 4 A. No. It was the same model of not a quota<br/>                 5 per se, but here's your -- We worked together to<br/>                 6 come up with a protected customer list, and it's<br/>                 7 typically ones they had great relationships with.<br/>                 8 They're already communicating with, already selling<br/>                 9 them the products; and so they, you know, have those<br/>                 10 relationships.<br/>                 11 And they had the same situation where they<br/>                 12 had to make contact with the -- with the customer,<br/>                 13 provide some sort of proposal, and close the sale<br/>                 14 within a period of time before losing them as a<br/>                 15 protected customer.<br/>                 16 It doesn't mean they couldn't sell to<br/>                 17 them. They just -- They would not be dedicated to<br/>                 18 them.<br/>                 19 Q. Did you tell me you had -- that your<br/>                 20 companies had two distributors in the United States?<br/>                 21 A. Correct.<br/>                 22 Q. Who were they?<br/>                 23 A. Medline and Alliance HealthCare.<br/>                 24 It's technically Medline ReNewal. It's a<br/>                 25 division of Medline.</p> |
| <p style="text-align: right;">Page 107</p> <p>1 be able to buy instruments. They would lose, you<br/>                 2 know, surgeon training, that sort of thing.<br/>                 3 So when those things are piled on, that<br/>                 4 made it very difficult, if not impossible, to<br/>                 5 continue sales efforts and -- And they would receive<br/>                 6 threatening letters from Intuitive, both the hospital<br/>                 7 and sometimes the distributors would receive letters<br/>                 8 from Intuitive threatening them, and so that caused<br/>                 9 them to continue to drop off.<br/>                 10 Q. Oh. Do you attribute the attrition of all<br/>                 11 of the reps and all of the distributors who did cease<br/>                 12 working on the store account to the conduct of<br/>                 13 Intuitive?<br/>                 14 A. At least 99 percent. I haven't looked at<br/>                 15 each one to see what the reason, but that is by far<br/>                 16 the overwhelming reason. There may be one or two for<br/>                 17 some other reason that I don't recall at the time;<br/>                 18 but by far, almost all of them were because of the<br/>                 19 actions of Intuitive.<br/>                 20 Q. Did the -- Did the reps, did they have a<br/>                 21 quota as part of their financial arrangements<br/>                 22 with Restore?<br/>                 23 A. They had designated customers and<br/>                 24 timelines that they had to both make contact with<br/>                 25 those hospitals, as well as a timeline to have them</p> | <p style="text-align: right;">Page 109</p> <p>1 Q. And Alliance was the other one?<br/>                 2 A. Correct.<br/>                 3 Q. And -- And what were the total sales<br/>                 4 generated by your two American United States<br/>                 5 distributors?<br/>                 6 A. I don't know.<br/>                 7 Q. No idea?<br/>                 8 A. I don't know off the top of my head. No.<br/>                 9 Q. More or less than a hundred dollars?<br/>                 10 A. Did you say a hundred dollars or a hundred<br/>                 11 thousand?<br/>                 12 Q. Hundred dollars.<br/>                 13 A. Oh, yeah. Much -- Much more. Less than<br/>                 14 a million. I don't know if it's more than a hundred<br/>                 15 thousand. I have to look and see.<br/>                 16 Q. Somewhere between a hundred thousand and a<br/>                 17 million dollars total sales generated by your two<br/>                 18 United States distributors -- yes?<br/>                 19 A. That's a fair guess.<br/>                 20 Q. And -- And do you attribute the --<br/>                 21 those -- those sales numbers to what you say are --<br/>                 22 that conduct by Intuitive?<br/>                 23 A. Absolutely.<br/>                 24 Q. No other cause?<br/>                 25 A. I'm not aware of any at the moment. No.</p>                                                                                                                                   |

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| <p style="text-align: right;">Page 134</p> <p>1 that, in fact, there had been nine procedures<br/>                 2 previously done, use -- at least nine procedures<br/>                 3 previously done, including that instrument?<br/>                 4 A. So the hospitals track all of that data,<br/>                 5 so that's -- That's information that -- that a<br/>                 6 hospital will have access to, as well as that's --<br/>                 7 You know, you'll have to ask the -- a<br/>                 8 surgeon; but, typically, in most, instruments are<br/>                 9 used hundreds and hundreds of times, so to have an<br/>                 10 instrument that's only used 9 times or 20 times or 40<br/>                 11 times is exceedingly rare in the medical device<br/>                 12 space, other than single-use instruments, which are<br/>                 13 designed to be used one time, but still are --<br/>                 14 Sometimes they're used multiple times.<br/>                 15 But in the multi-use arena, instruments<br/>                 16 are used typically hundreds of times before they're<br/>                 17 discarded; and so that's not anything unusual in the,<br/>                 18 you know, laparoscopic or -- or endoscopic space.<br/>                 19 Q. Yes. But my question is: How would the<br/>                 20 surgeon know how many uses -- how many uses a<br/>                 21 particular instrument had been used in once the<br/>                 22 interceptor was installed?<br/>                 23 A. They track those instruments by serial<br/>                 24 number, and they have that data in their system.<br/>                 25 Q. They being the surgeons?</p> | <p style="text-align: right;">Page 136</p> <p>1 number?<br/>                 2 A. Yes.<br/>                 3 Q. Who gave you his phone number?<br/>                 4 A. I think -- I think it was William<br/>                 5 Hufstetler or Matt Roberts, one of those two<br/>                 6 gentlemen. I don't recall a hundred percent.<br/>                 7 Q. Where were you when you -- you placed your<br/>                 8 call to Mr. Lipson?<br/>                 9 A. In the Restore Robotics office in Suwanee,<br/>                 10 Georgia.<br/>                 11 Q. Why did you call him?<br/>                 12 A. Because a customer had asked me if there<br/>                 13 was a way to remove the preventative -- preventive<br/>                 14 maintenance message on the robot, and I was told that<br/>                 15 he was involved with Intuitive back when that was<br/>                 16 being developed, and he may know how it worked and if<br/>                 17 it was possible to do that.<br/>                 18 Q. Who told you that?<br/>                 19 A. It was either Mr. Hufstetler or Mr.<br/>                 20 Roberts.<br/>                 21 Q. Who was the customer?<br/>                 22 A. Baylor Scott &amp; White, I think.<br/>                 23 It was either Baylor Scott &amp; White or<br/>                 24 Heart &amp; Health. I think it was -- it was one of<br/>                 25 those two. Both of them have asked us to do that.</p>                                                                          |
| <p style="text-align: right;">Page 135</p> <p>1 A. No. The hospital.<br/>                 2 Q. So in -- in your long study of surgical<br/>                 3 practice and all the operating rooms you've been in,<br/>                 4 how many times have you seen a surgeon about to<br/>                 5 commence a surgery call up Hospital Records and ask<br/>                 6 them to run the serial numbers on a particular piece<br/>                 7 of equipment to find out what its history was?<br/>                 8 Is that something you saw very often?<br/>                 9 A. I -- I can't say that I've seen that. I<br/>                 10 can't say that I've ever seen a surgeon ask how many<br/>                 11 times has any instrument been used ever.<br/>                 12 Q. Who is Ben Lipson?<br/>                 13 A. He's a former Intuitive engineer.<br/>                 14 Q. A friend of yours?<br/>                 15 A. No.<br/>                 16 Q. In -- In approximately the summer of<br/>                 17 2019, did you call Mr. Lipson?<br/>                 18 A. I did.<br/>                 19 Q. Where -- Where was he when you -- you --<br/>                 20 Well, strike that.<br/>                 21 Did you reach him by telephone?<br/>                 22 A. I did. I think it was through WhatsApp,<br/>                 23 'cause he was on the other side of the world in<br/>                 24 Macao.<br/>                 25 Q. And had somebody given you his phone</p>                                                                                                                                                                                                                                                     | <p style="text-align: right;">Page 137</p> <p>1 I'm not sure which one preceded the -- the other.<br/>                 2 Q. How long did you talk with Mr. Lipson?<br/>                 3 A. About 15 minutes.<br/>                 4 Q. Was there anything about the call that<br/>                 5 sticks out in your memory?<br/>                 6 A. Yeah. I asked him if it was, you know,<br/>                 7 possible to remove the -- the message.<br/>                 8 And short answer was no.<br/>                 9 And then he explained, you know, the<br/>                 10 process that you had to have access to the software<br/>                 11 on a laptop. It had to connect to like 11 different<br/>                 12 boards throughout the systems, the surgeon's console,<br/>                 13 and the robot. And had to check and make sure<br/>                 14 certain, you know, actions had taken place over a<br/>                 15 certain period of time.<br/>                 16 Each board would be reset, and then you<br/>                 17 had to have the -- the software on the laptop go<br/>                 18 through and check each one of those, and then the<br/>                 19 message would be removed if all those conditions were<br/>                 20 met.<br/>                 21 Q. Did you say anything in this conversation<br/>                 22 with Mr. Lipson about hacking into a system?<br/>                 23 A. Never.<br/>                 24 Q. Did Mr. Lipson say anything about hacking?<br/>                 25 A. No.</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 Q. Did either of you say anything where<br/>                 2 somebody might have misinterpreted the use of the<br/>                 3 word "hacking," like somebody said I have a hacking<br/>                 4 cough, or I just went to the hardware store, and I<br/>                 5 bought a hacksaw?<br/>                 6 Was there any use of the word "hack" in<br/>                 7 any context in your -- your conversation?<br/>                 8 A. I'm not aware of that word being used at<br/>                 9 all.<br/>                 10 Q. Did you ask Mr. Lipson if he could help<br/>                 11 you by gaining entry to the Intuitive system?<br/>                 12 A. No. Once he told --<br/>                 13 MR. BERHOLD: Objection.<br/>                 14 THE WITNESS: What?<br/>                 15 MR. BERHOLD: Sorry. Objection.<br/>                 16 MR. RUBY: What's the --<br/>                 17 THE WITNESS: Once he told us --<br/>                 18 MR. RUBY: -- objection?<br/>                 19 What's the objection? If it's to form,<br/>                 20 maybe I'll rephrase. So what's the objection?<br/>                 21 MR. BERHOLD: Oh, sorry, Allen. Are you<br/>                 22 referring to the -- When you say system, are you<br/>                 23 referring to the da Vinci surgical system?<br/>                 24 MR. RUBY: I'm not -- I'm not answering<br/>                 25 questions. I'm just trying to do my job.</p>                                               | <p style="text-align: right;">Page 140</p> <p>1 couldn't be done.<br/>                 2 I took it that it couldn't be done; and<br/>                 3 there was no more discussion about that, that<br/>                 4 particular subject.<br/>                 5 Q. Did you talk about other subjects?<br/>                 6 A. We talked about the reusing of the<br/>                 7 instruments and resetting the counter.<br/>                 8 Q. What did you say about that?<br/>                 9 A. I think he asked us what, you know, what<br/>                 10 all were we doing.<br/>                 11 And I just explained to him that we were<br/>                 12 installing a interceptor system that prevented the<br/>                 13 instruments from expiring where they could be reused<br/>                 14 to save the hospital money.<br/>                 15 Q. Was there any discussion between the two<br/>                 16 of you about the difference between training<br/>                 17 instruments and instruments that were meant to be<br/>                 18 used in surgery with humans?<br/>                 19 A. Oh, that's possible.<br/>                 20 Q. What do you remember?<br/>                 21 A. I don't remember that, but I'm sure that's<br/>                 22 likely.<br/>                 23 Q. What prompts you to think that that was<br/>                 24 likely when you don't remember what was said?<br/>                 25 A. Because I've had that conversation with</p>                                           |
| <p style="text-align: right;">Page 139</p> <p>1 I asked the question. You made an<br/>                 2 objection. I want to understand what the<br/>                 3 objection is, so maybe I'll rephrase it. I<br/>                 4 don't know what I'll do, but I need -- I want<br/>                 5 to respect you sufficiently to understand what<br/>                 6 your objection is.<br/>                 7 MR. BERHOLD: Well, let me be more blunt.<br/>                 8 The phrase -- Objection. The phrase "Intuitive<br/>                 9 system" is vague and ambiguous.<br/>                 10 MR. RUBY: I withdraw the question.<br/>                 11 Q. (By Mr. Ruby) Did you ask Mr. Parker<br/>                 12 (sic) if he would be willing to hack into whatever<br/>                 13 computer system was responsible for this PMD -- PM<br/>                 14 due message?<br/>                 15 A. You said Mr. Parker. So you want to<br/>                 16 restate the question with the right --<br/>                 17 Q. Sure.<br/>                 18 A. -- name?<br/>                 19 Q. Sure. Did you ask Mr. Lipson if he would<br/>                 20 help you by hacking into the system which was showing<br/>                 21 the message PM due?<br/>                 22 A. So no, at any time did the word "hack"<br/>                 23 ever come up. And I did not even ask him for his<br/>                 24 help once he described what was required, because it<br/>                 25 was it was a futile effort; and he said it -- it</p> | <p style="text-align: right;">Page 141</p> <p>1 other people multiple times.<br/>                 2 Q. What did he tell you?<br/>                 3 A. He was under the impression that the FDA<br/>                 4 required -- there was an FDA mandate that the<br/>                 5 instruments only be used ten times.<br/>                 6 Q. Did you have any expectation one way or<br/>                 7 the other as to whether that the phone conversation<br/>                 8 you had with Mr. Lipson was being recorded by<br/>                 9 anybody?<br/>                 10 A. No.<br/>                 11 Q. Did -- In this conversation, did Mr.<br/>                 12 Lipson tell you that he thought you were being<br/>                 13 unethical in your approach to him?<br/>                 14 A. I don't recall that at all. No.<br/>                 15 Q. Did you tell Mr. Lipson that you had a<br/>                 16 materials expert study the standard instruments and<br/>                 17 the training instruments to see whether there were<br/>                 18 differences between them?<br/>                 19 A. Probably. Yes.<br/>                 20 Q. Do you remember?<br/>                 21 A. I don't remember exactly; but, vaguely, as<br/>                 22 part of that same conversation, you know, dealing<br/>                 23 with, you know, what's the difference between a<br/>                 24 training instrument that can be used a hundred times<br/>                 25 versus a nontraining instrument? Are they made from</p> |



## Restore Robotics LLC v Intuitive Surgical

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| <p style="text-align: right;">Page 142</p> <p>1 the same materials?</p> <p>2       Rebotix had a materials analysis</p> <p>3 completed, and they appeared to all be the same</p> <p>4 materials.</p> <p>5       Q. Before the lunch break, I was asking you</p> <p>6 about -- excuse me -- reps and distributors. Did</p> <p>7 your companies have an employee whose title was sales</p> <p>8 manager or international sales manager or global</p> <p>9 sales -- sales manager?</p> <p>10       Was there anybody whose job it was to</p> <p>11 manage overall the sales effort that was going on for</p> <p>12 the companies' products and services?</p> <p>13       A. Not employees. But myself and Mills</p> <p>14 Vautrot handled most of those duties.</p> <p>15       Q. Were you in -- in function in -- in the</p> <p>16 job that you did essentially the salesperson in chief</p> <p>17 for the products and services of Restore Robotics and</p> <p>18 Restore Robotics Repair?</p> <p>19       A. Yes.</p> <p>20       Q. And were you, as the salesperson in chief,</p> <p>21 closely connected to the -- the sales efforts that</p> <p>22 were going on, on behalf of the companies by both of</p> <p>23 reps and distributors?</p> <p>24       A. I was familiar with most of them; but, you</p> <p>25 know, with that many, I was not in touch with all of</p>                             | <p style="text-align: right;">Page 144</p> <p>1 challenge, is to make sure everybody's doing the best</p> <p>2 they can to provide the right information to the</p> <p>3 right people.</p> <p>4       Keep in mind, too, that most of the</p> <p>5 salespeople and distributors either have their own</p> <p>6 information or didn't use any at all; and in this</p> <p>7 business, the relationship is the most important</p> <p>8 thing, so, you know, brochures and that sort of thing</p> <p>9 is -- is almost irrelevant. I don't think we ever</p> <p>10 got any customer from a brochure or a website. It's</p> <p>11 all about those personal relationships.</p> <p>12       You know, every sale that I made, you</p> <p>13 know, was because I either went to meet with them or</p> <p>14 talked to them over the phone; and it was, you know,</p> <p>15 discussions, long discussions.</p> <p>16       This is not something they decide to do,</p> <p>17 you know, on a whim and -- And they vet, you know,</p> <p>18 the process. They want to see samples. They want to</p> <p>19 have, you know, some testing done. They want to do</p> <p>20 whatever they want to do.</p> <p>21       And, of course, we, you know, give them</p> <p>22 that opportunity and ability to -- to look at</p> <p>23 everything and make their decisions. I mean,</p> <p>24 they're -- they're the arbiters of what's safe and</p> <p>25 what's an acceptable risk. So the hospitals and the</p> |
| <p style="text-align: right;">Page 143</p> <p>1 them on a day-to-day basis, but on a -- an occasional</p> <p>2 basis; and Mills handles a lot more of the day-to-day</p> <p>3 interaction with those reps and distributors.</p> <p>4       Q. Did your companies, did Restore Robotics</p> <p>5 and Restore Robotics Repair, provide sales materials</p> <p>6 to be used by the distributors and reps?</p> <p>7       A. Yes.</p> <p>8       Q. And did you mainly -- Not always, but</p> <p>9 mainly, when you could, approve or disapprove the</p> <p>10 content of the sales materials that were being sent</p> <p>11 out to the people in the field?</p> <p>12       A. Yes.</p> <p>13       Q. Was it very important to you at all, the</p> <p>14 sales materials that the company furnished to the</p> <p>15 reps and distributors were accurate?</p> <p>16       A. Yes.</p> <p>17       Q. And then you personally would not tolerate</p> <p>18 any inaccurate information going out to the reps and</p> <p>19 distributors or to anybody if it pertained to the</p> <p>20 goods and services offered by Restore Robotics; is</p> <p>21 that true?</p> <p>22       A. Well, I would, obviously, love to have,</p> <p>23 you know, everything to be exact all the time. When</p> <p>24 you're dealing with, you know, a fast-moving</p> <p>25 organization, you know, that becomes your -- your</p> | <p style="text-align: right;">Page 145</p> <p>1 doctors, typically, that's a multi-pronged approach.</p> <p>2 It's not just, hey, look, there's a cool brochure.</p> <p>3 Let's do this. It didn't work that way.</p> <p>4       It's a -- It's a long process for them to</p> <p>5 make that decision, and they ask a lot of questions</p> <p>6 and -- And they want to see things and make those</p> <p>7 decisions for themselves.</p> <p>8       Q. Well, for the reasons you just indicated,</p> <p>9 did you try to provide information to the potential</p> <p>10 decision makers in hospitals?</p> <p>11       A. Sure. If they requested, absolutely.</p> <p>12       Q. And did you try to provide information to</p> <p>13 surgeons who might be users of the da Vinci surgical</p> <p>14 system?</p> <p>15       A. Yes.</p> <p>16       Q. And did you want to be sure that the</p> <p>17 information you provided to the executives and</p> <p>18 hospitals and -- and to doctors was accurate?</p> <p>19       A. Of course.</p> <p>20       Q. And -- and is it a -- a -- Strike that.</p> <p>21       Now was your company sometimes asked by</p> <p>22 prospective customers and/or reps, distributors to</p> <p>23 furnish estimates or proposals regarding the -- the</p> <p>24 price, the cost of the interceptor system?</p> <p>25       A. Certainly. So that was, you know, part of</p>                                                                              |

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| <p style="text-align: right;">Page 146</p> <p>1 our process, which was to, you know, start with that<br/>                 2 universe of, you know, here's all the robots out<br/>                 3 there; and then it's, you know, them analyzing their<br/>                 4 existing usage of the instruments; and then we would<br/>                 5 generate a proposal. Sometimes written.<br/>                 6 Sometimes they would just tell us, hey, we<br/>                 7 use about 150 instruments a year. You know, what's<br/>                 8 that look like? Sometimes it's more detailed, and so<br/>                 9 that would whittle down to the next level of, you<br/>                 10 know, potential customer.<br/>                 11 And then some of those would become<br/>                 12 customers. Some of those did not become customers.<br/>                 13 Because as they started having conversations with<br/>                 14 Intuitive, they would tell them, you know, things<br/>                 15 like if you do that, you know, you're -- you're<br/>                 16 cutting yourself off. We're not going to provide you<br/>                 17 any support. We're not going to train your doctors.<br/>                 18 We're not going to sell you any more equipment.<br/>                 19 We're abandoning you. We're going to, you know, try<br/>                 20 to convince the doctors to go to other hospitals.<br/>                 21 So lots of tactics and techniques to try<br/>                 22 to prevent people from taking that -- that next step<br/>                 23 to -- to actually doing business with us.<br/>                 24 MR. RUBY: Could we have please Bates Nos.<br/>                 25 30213 to 30215 marked as the -- an exhibit.</p> | <p style="text-align: right;">Page 148</p> <p>1 is -- is that right?<br/>                 2 A. Yes.<br/>                 3 Q. And those were da Vinci instruments. Is<br/>                 4 that so?<br/>                 5 A. I don't know that they were all da Vinci<br/>                 6 instruments. Probably, but I -- I don't --<br/>                 7 Now I don't know where that graphic came<br/>                 8 from.<br/>                 9 Q. Was this graphic we're looking at a -- an<br/>                 10 advertising brochure for Restore Robotics?<br/>                 11 A. Yes.<br/>                 12 Q. Did anybody from da Vinci ever, to your<br/>                 13 knowledge -- Strike that.<br/>                 14 Did anyone from Intuitive Surgical, to<br/>                 15 your knowledge, ever give permission to Restore<br/>                 16 Robotics to use images of Intuitive products in<br/>                 17 advertising brochures?<br/>                 18 A. I'm not aware of that.<br/>                 19 Q. Did you ever ask for that permission?<br/>                 20 A. I did not.<br/>                 21 Q. Did you ever instruct anyone in your<br/>                 22 organization who asked for that permission?<br/>                 23 A. I did not.<br/>                 24 Q. Let's go now to Page 30213.<br/>                 25 Now it says right at the top that this was</p>                                                                                                                       |
| <p style="text-align: right;">Page 147</p> <p>1 THE CONCIERGE TECH: Sure. Please stand<br/>                 2 by.<br/>                 3 MR. RUBY: We got it or -- or --<br/>                 4 THE CONCIERGE TECH: It's in the process<br/>                 5 of introducing now.<br/>                 6 MR. RUBY: All right.<br/>                 7 THE CONCIERGE TECH: I've got to put a<br/>                 8 stamp on it, though.<br/>                 9 And, Doug, it looks like it starts with<br/>                 10 3 -- with number 10 on the end, the 30210.<br/>                 11 MR. DeBAUGH: Yeah.<br/>                 12 THE CONCIERGE TECH: And it's a six-page<br/>                 13 document?<br/>                 14 MR. DeBAUGH: Yeah.<br/>                 15 THE CONCIERGE TECH: Okay. Just wanted to<br/>                 16 make sure.<br/>                 17 (Exhibit 4 was marked for identification.)<br/>                 18 THE CONCIERGE TECH: All right. And the<br/>                 19 document is now up.<br/>                 20 Q. (By Mr. Ruby) All right. Let's go to<br/>                 21 Page 30213.<br/>                 22 I'm sorry. Let's -- Let's back up one to<br/>                 23 Page 212.<br/>                 24 This page we're looking at now has a<br/>                 25 picture of some portions of some instruments on it;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p style="text-align: right;">Page 149</p> <p>1 a confidential proposal.<br/>                 2 Do you see that?<br/>                 3 A. Yes.<br/>                 4 Q. Did -- The fact that it was a<br/>                 5 confidential proposal, does this tell us in and of<br/>                 6 itself whether the recipient of the proposal was<br/>                 7 already a customer of -- of Restore Robotics or was<br/>                 8 not a customer or you can't tell from that<br/>                 9 designation?<br/>                 10 A. I can't tell from that designation. I'm<br/>                 11 assuming from the word "proposal" it means they're<br/>                 12 not a customer at this time.<br/>                 13 Q. All right. Now would you look at the --<br/>                 14 the first paragraph that begins, "This Confidential<br/>                 15 Proposal..."<br/>                 16 Did you approve this language in order to<br/>                 17 give the impression that the services of Restore<br/>                 18 Robotics would be taking -- taking place in a<br/>                 19 facility that was built or owned or managed by<br/>                 20 Restore Robotics?<br/>                 21 A. That's not what that first sentence means<br/>                 22 at all.<br/>                 23 MR. RUBY: Could you go down, please.<br/>                 24 Q. (By Mr. Ruby) Beneath that, there's some<br/>                 25 Letters A, B, C, D and so forth. Could you look at</p> |

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| <p style="text-align: right;">Page 150</p> <p>1 B, please. It says, "Sharpening of EndoWrist<br/>                 2 Instruments."<br/>                 3 A. Yes.<br/>                 4 Q. And it says, "EndoWrist scissor blades can<br/>                 5 become too dull to operate effectively before their<br/>                 6 10th use." And then there's another sentence.<br/>                 7 But stopping after "10th use," do you see<br/>                 8 that?<br/>                 9 A. I do.<br/>                 10 Q. Who told you that?<br/>                 11 A. Surgeons --<br/>                 12 Q. Did they tell you once or were --<br/>                 13 A. -- and other hospital personnel.<br/>                 14 Q. Excuse me. I didn't mean --<br/>                 15 A. I heard that multi --<br/>                 16 Q. Have you --<br/>                 17 A. I heard that multiple times.<br/>                 18 Q. Have -- Have you finished your answer?<br/>                 19 A. Yes.<br/>                 20 Q. All right. So you've been told numerous<br/>                 21 times by, I -- I think you said, surgeons and<br/>                 22 hospital personnel that "EndoWrist scissor blades can<br/>                 23 become too dull to operate effectively before their<br/>                 24 10th use," closed quote.<br/>                 25 That was what you'd been told over the</p> | <p style="text-align: right;">Page 152</p> <p>1 Q. Did -- Did you get any takers? Did --<br/>                 2 Did any hospitals take you up on that?<br/>                 3 A. I'm not sure. I don't think we had the<br/>                 4 opportunity. I'm not sure the date of this, you<br/>                 5 know, document; but like I said earlier, we didn't<br/>                 6 get very far into the business before everyone was,<br/>                 7 you know, shut down.<br/>                 8 I'm sure there were sharpening of<br/>                 9 instruments. You have to verify it with Mr. May. I<br/>                 10 don't know if that was done as a separate service<br/>                 11 or -- or as part of -- just as part of a resetting of<br/>                 12 the instrument during that testing and inspection<br/>                 13 process.<br/>                 14 Q. Well, was the sharpening of instruments by<br/>                 15 Restore done in accordance with any specifications<br/>                 16 for sharpness that were associated with a particular<br/>                 17 type of instrument?<br/>                 18 A. That'd be a question for Mr. May.<br/>                 19 Q. You don't know?<br/>                 20 A. I believe it was, but I don't know the --<br/>                 21 the exact specifications.<br/>                 22 Q. Well, I didn't ask you for exact<br/>                 23 specifications.<br/>                 24 My question is: Were the sharpening of<br/>                 25 instruments, when it happened, undertaken by Restore</p> |
| <p style="text-align: right;">Page 151</p> <p>1 years many times -- yes?<br/>                 2 A. Yes.<br/>                 3 Q. What, if anything, were the installers of<br/>                 4 the interceptor technology telling you about whether<br/>                 5 or not the instruments that they were installing the<br/>                 6 interceptor on appeared to be too dull to operate<br/>                 7 effectively?<br/>                 8 A. I did not have conversations directly with<br/>                 9 the employees about that subject. Kevin May would<br/>                 10 have had those conversations.<br/>                 11 MR. RUBY: You -- If you'd turn the page,<br/>                 12 please.<br/>                 13 Q. (By Mr. Ruby) It says, "PRICING AND<br/>                 14 TERMS."<br/>                 15 Do you see that?<br/>                 16 A. Yes.<br/>                 17 Q. And the first item under that is, quote,<br/>                 18 "Sharpening of EndoWrist Instrument."<br/>                 19 Do you see that?<br/>                 20 A. Yes.<br/>                 21 Q. And this offers to provide sharpening,<br/>                 22 including a rigorous inspection and testing and<br/>                 23 aligning and tightening for \$375 per instrument.<br/>                 24 Do you see that?<br/>                 25 A. Yes.</p>                         | <p style="text-align: right;">Page 153</p> <p>1 Robotics according to some specifications?<br/>                 2 A. Yes.<br/>                 3 Q. And whose specifications were those?<br/>                 4 A. That'd be a question for Mr. May.<br/>                 5 Q. Do you know?<br/>                 6 A. I do not.<br/>                 7 Q. Now would you look please at Page 30215.<br/>                 8 You see that?<br/>                 9 A. Yes.<br/>                 10 Q. Does this appear to you to be part of a<br/>                 11 confidential proposal to a prospective customer?<br/>                 12 A. Yes.<br/>                 13 Q. Now it -- it -- Help me to understand<br/>                 14 this, please. Across the top, there are column<br/>                 15 headings -- model number, usages.<br/>                 16 The model numbers were Intuitive's model<br/>                 17 number associated with a particular instrument; is<br/>                 18 that true?<br/>                 19 A. That's correct.<br/>                 20 Q. And the usages were the usage limitations<br/>                 21 that Intuitive had established for these particular<br/>                 22 instruments. Is that so?<br/>                 23 A. Correct.<br/>                 24 Q. And then there's something called the "Da<br/>                 25 Vinci Published Price." Yes?</p>                                                                                                                                                                                                                 |



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| <p style="text-align: right;">Page 154</p> <p>1 A. Yes, sir.</p> <p>2 Q. And -- And is that what it sounds like.</p> <p>3 Da Vinci had published the -- the price for</p> <p>4 acquisition of -- the unit price for acquisition of</p> <p>5 these particular instruments -- yes?</p> <p>6 A. Yes.</p> <p>7 Q. To your knowledge, were these instruments</p> <p>8 also available in 1918, (sic) 1990 (sic) at lesser</p> <p>9 prices from other sources?</p> <p>10 A. I don't know that I understand the</p> <p>11 question. Are you saying did someone offer --</p> <p>12 Well, restate the question.</p> <p>13 Q. Well, to your knowledge, weren't these</p> <p>14 particular instruments available from sources other</p> <p>15 than Intuitive at a lower price?</p> <p>16 A. Occasionally.</p> <p>17 Q. Well, you're in the parts business now,</p> <p>18 aren't you?</p> <p>19 A. Yes.</p> <p>20 Q. Does your company which bears your name</p> <p>21 sell some or all of these instruments at prices less</p> <p>22 than what's on here as the da Vinci published price?</p> <p>23 A. Yes. I thought you meant in -- in --</p> <p>24 outside of our companies.</p> <p>25 Q. Oh. Your -- Your companies had sources</p> | <p style="text-align: right;">Page 156</p> <p>1 else.</p> <p>2 This dollar savings is reflective of just</p> <p>3 what it says. The da Vinci published price is 2,000.</p> <p>4 If you do a Robotic -- Restore Robotics' repair, it's</p> <p>5 1500. That's -- You'll save \$500, if you do the</p> <p>6 repair --</p> <p>7 Q. Well, was the --</p> <p>8 A. -- through Restore Robotics.</p> <p>9 Q. Excuse me. I'm sorry to interrupt you.</p> <p>10 A. I'm sorry.</p> <p>11 Q. Have you finished?</p> <p>12 A. Yeah. I'm finished.</p> <p>13 Q. The 25-percent figure, using the first row</p> <p>14 in -- in this little chart, 25 percent represents the</p> <p>15 difference between what you're calling the da Vinci</p> <p>16 published price and the Restore Robotics repair fee</p> <p>17 and the difference between \$2,000 and \$1500 is indeed</p> <p>18 25 percent, right?</p> <p>19 A. Correct.</p> <p>20 Q. If the customer decided that it wanted to</p> <p>21 see if it could get a better price for a particular</p> <p>22 da Vinci procedure or a instrument and located the</p> <p>23 instrument maybe from you for the -- a price of,</p> <p>24 let's say, \$1900, then the percentage saving would be</p> <p>25 less than 25 percent, wouldn't it?</p>                                                                         |
| <p style="text-align: right;">Page 155</p> <p>1 and means by which you were able to offer these</p> <p>2 instruments, at -- at least most of them, if not all,</p> <p>3 at a lower than da Vinci's published price; is that</p> <p>4 true?</p> <p>5 A. Yes.</p> <p>6 Q. And -- And then the next column is</p> <p>7 "Restore Robotics Repair Fee." What -- What is</p> <p>8 that?</p> <p>9 A. That's how much Restore Robotics would</p> <p>10 charge to repair the instrument.</p> <p>11 Q. And repair is your description of the</p> <p>12 installation of the interceptor technology; is that</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. And -- And then there's a column it calls</p> <p>16 dollar -- It's called "Dollar Savings"; is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Now the dollars savings number is not an</p> <p>20 accurate number if you assume that the customer</p> <p>21 actually will go ahead and buy an instrument from one</p> <p>22 of the sources other than da Vinci, right?</p> <p>23 A. You're making a -- a leap there. This is</p> <p>24 talking about doing a repair, and you're conflating</p> <p>25 that with someone buying an instrument from somewhere</p>    | <p style="text-align: right;">Page 157</p> <p>1 A. But you're again conflating two different</p> <p>2 things, that one has nothing to do with the other.</p> <p>3 This is strictly talking about repairs.</p> <p>4 This is not talking about how much can you save if</p> <p>5 you did something totally different. This is talking</p> <p>6 about how much can you save if you did the repair</p> <p>7 fee.</p> <p>8 Q. But save from what?</p> <p>9 A. From -- Every customer thought it was</p> <p>10 pretty self-explanatory that that dollar savings is</p> <p>11 how much they would save if they use Restore Robotics</p> <p>12 Repairs versus buying a new da Vinci instrument.</p> <p>13 Q. Okay. Now percentage saved, we -- we</p> <p>14 touched on that. Dollar savings, I understand what</p> <p>15 you're saying.</p> <p>16 "Units Ordered," do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What does that signify?</p> <p>19 A. That's the number of instruments that</p> <p>20 either the salesperson put in the system or the</p> <p>21 customer told them to put in the system to see how</p> <p>22 many they potentially wanted to have done over X</p> <p>23 period of time, so we don't know what -- I don't</p> <p>24 know what that particular conversation was like.</p> <p>25 If they put in, you know, we're going to</p> |

**EXHIBIT 15**

**to**

**PAUL D. BRACHMAN DECLARATION IN SUPPORT  
OF DEFENDANT'S MOTION IN LIMINE NO. 1  
TO EXCLUDE OUT-OF-COURT HOSPITAL  
STATEMENTS**

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL )  
ROBOT ANTITRUST LITIGATION ) Case No.:  
\_\_\_\_\_) 3:21-cv-03825-VC  
THIS DOCUMENT RELATES TO: )  
ALL CASES ) Pages 1 to 205  
\_\_\_\_\_)  
SURGICAL INSTRUMENT SERVICE )  
COMPANY, INC., )  
\_\_\_\_\_)  
Plaintiff, )  
\_\_\_\_\_)  
vs. )  
\_\_\_\_\_)  
INTUITIVE SURGICAL, INC., )  
\_\_\_\_\_)  
Defendant. )  
\_\_\_\_\_)

DEPOSITION OF:  
CLIFTON EARL PARKER, VOLUME I  
TUESDAY, OCTOBER 25, 2022  
9:08 a.m. Eastern Daylight Time

REPORTED BY:  
Vickie Blair  
CSR No. 8940, RPR-CRR  
JOB NO. 5541122

PAGES 1 - 207

Page 1

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Deposition of CLIFTON EARL PARKER, the witness, taken on<br/> 2 behalf of the Defendant, on Tuesday, October 25, 2022,<br/> 3 9:08 a.m. Eastern Daylight Time, before VICKIE BLAIR,<br/> 4 CSR No. 8940, RPR-CRR.<br/> 5<br/> 6 APPEARANCES OF COUNSEL VIA ZOOM:<br/> 7<br/> 8 FOR THE WITNESS:<br/> 9 JEFFREY L. BERHOLD, P.C.<br/> BY JEFF L. BERHOLD, Partner<br/> 10 1230 Peachtree Street<br/> Suite 1050<br/> 11 Atlanta, Georgia 30309<br/> 404-872-3800<br/> 12 jeff@berhold.com<br/> 13 FOR PLAINTIFF/COUNTER-DEFENDANT SURGICAL INSTRUMENT<br/> SERVICE CO. INC.:<br/> 14<br/> HALEY GUILIANO LLP<br/> 15 BY RICHARD T. MCCAULLEY, Partner<br/> 111 North Market Street<br/> 16 Suite 900<br/> San Jose, California 95113<br/> 17 +1 669 213 1071<br/> richard.mccauley@hglaw.com<br/> 18<br/> HALEY GUILIANO LLP<br/> 19 BY DONNY K. SAMPORNA, Associate<br/> 111 North Market Street<br/> 20 Suite 900<br/> San Jose, California 95113<br/> 21 +1 669 213 1080<br/> donny.samporna@hglaw.com<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                  | <p>1 I N D E X<br/> 2<br/> 3 WITNESS EXAMINATION PAGE<br/> 4 CLIFTON EARL PARKER<br/> 5 (MS. WINNER) 8<br/> 6 (MR. CORRIGAN) 128<br/> 7 (MR. MCCAULLEY) 172<br/> 8 (MS. WINNER) 175<br/> 9 (MR. CORRIGAN) 193<br/> 10 (MS. WINNER) 197<br/> 11<br/> 12 LUNCH RECESS<br/> 13 Page 127<br/> 14<br/> 15 INFORMATION REQUESTED<br/> 16 None<br/> 17 QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER<br/> 18 None<br/> 19<br/> 20 E X H I B I T S<br/> 21 EXHIBIT NO. PAGE DESCRIPTION<br/> 22 Exhibit 121 19 Email with attachments, Bates<br/> 23 numbers Restore-00094918 through<br/> 24 Restore-00094956<br/> 25</p>                                                                                                                                                                                                                                                                                                                        |
| <p>1 APPEARANCES OF COUNSEL VIA ZOOM: (Continued)<br/> 2 FOR DEFENDANT INTUITIVE SURGICAL, INC.:<br/> 3 COVINGTON &amp; BURLING LLP<br/> BY SONYA D. WINNER, Partner<br/> 4 415 Mission Street<br/> Suite 5400<br/> 5 San Francisco, California 94105-2533<br/> +1 415 591 7072<br/> 6 swinner@cov.com<br/> 7 COVINGTON &amp; BURLING LLP<br/> BY ANNA BOBROW, Associate<br/> 8 850 Tenth Street, NW<br/> Washington, D.C. 20001-4956<br/> 9 +1 202 662 5948<br/> abobrow@cov.com<br/> 10<br/> INTERIM CO-LEAD COUNSEL FOR THE PROPOSED CLASS:<br/> 11<br/> SPECTOR ROSEMAN &amp; KODROFF, P.C.<br/> 12 BY JEFFREY L. SPECTOR, Partner<br/> 2001 Market Street<br/> 13 Suite 3420<br/> Philadelphia, Pennsylvania 19103<br/> 14 P: 215-496-0300<br/> jspector@srkattorneys.com<br/> 15<br/> SPECTOR ROSEMAN &amp; KODROFF, P.C.<br/> 16 BY JEFFREY J. CORRIGAN, Partner<br/> 2001 Market Street<br/> 17 Suite 3420<br/> Philadelphia, Pennsylvania 19103<br/> 18 P: 215-496-0300<br/> jcorrigan@srkattorneys.com<br/> 19<br/> ALSO PRESENT:<br/> 20<br/> RAMON A. PERAZA, Videographer<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p> | <p>1 E X H I B I T S (Continued)<br/> 2 EXHIBIT NO. PAGE DESCRIPTION<br/> 3 Exhibit 122 56 Email with attachments, Bates<br/> 4 numbers Restore-00094567 through<br/> 5 Restore-00094586<br/> 6 Exhibit 123 63 Email with attachment, Bates<br/> 7 numbers Restore-00010131 through<br/> 8 Restore-00010137<br/> 9 Exhibit 124 81 Email chain, Bates numbers<br/> 10 Restore-00091370 through<br/> 11 Restore-00091410<br/> 12 Exhibit 125 84 Letter to Rick Ferreira from Mark<br/> 13 Trumbore dated September 30, 2022,<br/> 14 with attachment titled<br/> 15 "Indications for Use"<br/> 16 Exhibit 126 92 Email chain with attachments,<br/> 17 Bates numbers Restore-00094344<br/> 18 through Restore-00094351<br/> 19 Exhibit 127 94 Email chain with attachments,<br/> 20 Bates numbers Restore-00091178<br/> 21 through Restore-00091184<br/> 22 Exhibit 128 96 Email, Bates number<br/> 23 Restore-00091362<br/> 24<br/> 25</p> |
| Page 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|                                                                     |                                                                     |
|---------------------------------------------------------------------|---------------------------------------------------------------------|
| 1 The only difference between the Si and the 11:38:34               | 1 so if it includes more than just the -- the end piece 11:42:03    |
| 2 Xi is that housing, the Xi is rotated 90 degrees. The 11:38:37    | 2 of the development of the Xi reader, then please 11:42:06         |
| 3 Si instrument connects to the robot with four contact 11:38:46    | 3 describe that. 11:42:09                                           |
| 4 pins, whereas the Xi connects via RFID, so the only 11:38:50      | 4 A Okay. 11:42:09                                                  |
| 5 real difference is the difference between four pogo 11:38:58      | 5 MS. WINNER: Object. Object to the form. 11:42:11                  |
| 6 connector pins and RFID for communication between the 11:39:00    | 6 If there is a question in there. 11:42:13                         |
| 7 counter and the robot arm. 11:39:07                               | 7 MR. CORRIGAN: I said to please describe, 11:42:17                 |
| 8 Q What, if any, affirmative actions did 11:39:10                  | 8 so you asked me a question, you just want to talk about 11:42:18  |
| 9 Restore take to engage in the repair of the X and Xi 11:39:14     | 9 the ultimate, sort of last end change development of 11:42:23     |
| 10 EndoWrists? 11:39:18                                             | 10 the Xi reader, and I'd asked you if you could, could 11:42:26    |
| 11 A We started in 2020, I believe. The first 11:39:18              | 11 you please describe the entirety of the development of 11:42:31  |
| 12 thing we did is we hired Marcus Engineering, through 11:39:25    | 12 the Xi reader, including the last piece. 11:42:35                |
| 13 Innovative, to -- to go to a robot at a hospital and do 11:39:33 | 13 MS. WINNER: Object to the form. 11:42:37                         |
| 14 an analysis to see if they were able to capture that 11:39:39    | 14 THE WITNESS: So basically the first step 11:42:38                |
| 15 RFID communication between the instrument and the 11:39:48       | 15 was hiring Marcus Engineering to do the analysis to see 11:42:40 |
| 16 robot, and that was the first element, and that was 11:39:52     | 16 if the data could be collected between the instrument 11:42:44   |
| 17 successful. 11:39:53                                             | 17 and the reader. 11:42:51                                         |
| 18 Then the -- the next project was to start 11:39:55               | 18 The second was there was some additional 11:42:52                |
| 19 developing the reader to be able to read how many lives 11:40:03 | 19 analysis on what's the -- the best approach to go about 11:42:58 |
| 20 and to read all the data about that instrument, which 11:40:06   | 20 doing that. 11:43:01                                             |
| 21 was the model number, the serial number, the version 11:40:09    | 21 Then the robot, it -- the actual 11:43:02                        |
| 22 number, and how many lives it had, so we were able to 11:40:13   | 22 acquisition of the robot itself. 11:43:09                        |
| 23 decrypt that data and -- and read that data, which is 11:40:19   | 23 And then paying for the -- the -- the 11:43:10                   |
| 24 the next step to being able to now change that data and 11:40:22 | 24 development of the product that we call the reader. 11:43:14     |
| 25 put it back on the instrument. 11:40:28                          | 25 And then the -- what we're calling the -- 11:43:19               |
| Page 134                                                            | Page 136                                                            |
| 1 Q How much money did it take you to develop, 11:40:31             | 1 the Xi development, that's been multiple phases, so I 11:43:26    |
| 2 and when I say "you," I meant Restore, how much money 11:40:34    | 2 don't have the numbers in front of me, but you're 11:43:30        |
| 3 did it take Restore to develop the Xi reader? 11:40:37            | 3 talking 1.3 million, 1.4 million, in that range. 11:43:34         |
| 4 A Oh, gosh, I don't recall exactly, but I 11:40:42                | 4 BY MR. CORRIGAN: 11:43:38                                         |
| 5 want to say greater than \$50,000. 11:40:53                       | 5 Q Would that include the purchase of the 11:43:39                 |
| 6 Q I believe earlier with -- oh, I'm sorry, I 11:40:57             | 6 robot? 11:43:41                                                   |
| 7 believe earlier with -- in response to Ms. Winner, you 11:41:00   | 7 A Yes. 11:43:41                                                   |
| 8 mentioned that you -- Restore had bought an Xi robot; 11:41:03    | 8 That does not include any of our personal 11:43:42                |
| 9 is that correct? 11:41:06                                         | 9 time, that's just either our money out of pocket and/or 11:43:45  |
| 10 A Yes. 11:41:06                                                  | 10 the -- the equity for the robot. 11:43:51                        |
| 11 Q Would that have been another -- 11:41:06                       | 11 Q Why did you purchase the Xi robot? 11:43:56                    |
| 12 A Let me rephrase that. 11:41:10                                 | 12 A So we needed to be able to utilize the 11:44:00                |
| 13 We did not outright purchase it, but in 11:41:11                 | 13 robot for a couple things, number one, to make sure 11:44:03     |
| 14 exchange for ownership and the value of that is in 11:41:15      | 14 that what we're doing actually works, and -- and works 11:44:05  |
| 15 excess of a million dollars. 11:41:18                            | 15 safely, and part of the 510K process, you have to 11:44:11       |
| 16 Now let me get you to restate the question 11:41:25              | 16 utilize the instrument on the robot, so there's a lot 11:44:19   |
| 17 so I understand. Are you asking for the reader 11:41:28          | 17 of testing, utilizing the instrument on the robot 11:44:23       |
| 18 specifically or all the develop efforts to get to the 11:41:30   | 18 and -- and electrical safety testing with the 11:44:29           |
| 19 point of the reader? 11:41:35                                    | 19 instrument connected to the robot. 11:44:33                      |
| 20 Q Well, the overall theme of my question in 11:41:37             | 20 Q Do you know what an Xi cap removal machine 11:44:35            |
| 21 this area are affirmative acts that you took to enter 11:41:40   | 21 is? 11:44:38                                                     |
| 22 the Xi repair business, so I think that, to answer your 11:41:46 | 22 A Yes. 11:44:38                                                  |
| 23 question, everything that went into your -- anything 11:41:49    | 23 Q What is that? 11:44:38                                         |
| 24 that went into your ability to enter the X and Xi 11:41:57       | 24 A That's a -- a device that was developed to 11:44:41            |
| 25 business, including the development of the Xi reader, 11:42:01   | 25 remove the outer cover or cap to be able to get access 11:44:46  |
| Page 135                                                            | Page 137                                                            |

|                                                                     |                                                                     |
|---------------------------------------------------------------------|---------------------------------------------------------------------|
| 1 to the inside. 11:44:53                                           | 1 A We have lots of prospective customers that 11:47:58             |
| 2 Q Does Restore have one of those? 11:44:55                        | 2 we could sign contracts with, but we have not done so 11:48:01    |
| 3 A I think we have two. 11:44:58                                   | 3 at this point cause it's futile until we get some sort 11:48:04   |
| 4 Q How did you come across -- how did you 11:45:00                 | 4 of relief from Intuitive blocking. 11:48:07                       |
| 5 come to acquire those? 11:45:03                                   | 5 Q What makes you think you could sign 11:48:10                    |
| 6 A Kevin was involved in that process, and I 11:45:04              | 6 contracts with those customers if it weren't futile? 11:48:12     |
| 7 think that one of -- I'm not a hundred percent sure, 11:45:12     | 7 A They've told us they would sign contracts 11:48:15              |
| 8 but I think Rick's team, Alliance Healthcare, had the 11:45:19    | 8 with us tomorrow and do business with us tomorrow. 11:48:17       |
| 9 resource to have that developed. 11:45:23                         | 9 And some of -- some of the hospitals, 11:48:20                    |
| 10 Q Did you secure any additional facilities 11:45:24              | 10 there's no -- they don't sign contracts, they just 11:48:22      |
| 11 or space in order to repair X and Xi EndoWrists? 11:45:31        | 11 issue work. This is a -- it's not like you're buying a 11:48:26  |
| 12 A We did. We bought a building in Las 11:45:37                   | 12 \$4 million, you know, MRI machine, they say, "Hey, can 11:48:30 |
| 13 Vegas. 11:45:40                                                  | 13 you repair this instrument?" It -- you know, we say 11:48:35     |
| 14 Q How many square feet is that? Do you 11:45:40                  | 14 it's \$1,800 to repair this instrument, we send them an 11:48:38 |
| 15 know? 11:45:42                                                   | 15 invoice, they pay us, or they send us a purchase order, 11:48:43 |
| 16 A I don't know, I'm going to guess 3200, 11:45:42                | 16 we send them an invoice, and they pay us. So it's 11:48:49       |
| 17 that's a guess, I don't re- -- I don't remember. 11:45:49        | 17 not -- there's not a need for a big long contract 11:48:51       |
| 18 Q Approximately how much money would you say 11:45:52            | 18 typically. 11:48:53                                              |
| 19 that you spent on developing the technology to enter 11:45:57    | 19 Some hospitals do want an overarching 11:48:54                   |
| 20 the Xi -- the X and Xi repair business? 11:46:02                 | 20 contract, if they have multiple facilities, to be able 11:48:57  |
| 21 A Well, if you count the building, if you 11:46:06               | 21 to maintain consistent pricing, which is not an issue 11:49:03   |
| 22 count all the different components, it's going to be 11:46:08    | 22 with us because we have consistent pricing no matter 11:49:07    |
| 23 two million plus. 11:46:16                                       | 23 who the hospital facility is. 11:49:11                           |
| 24 Q Please describe -- you've already sort of 11:46:18             | 24 Q And you mentioned a moment ago other types 11:49:12            |
| 25 covered it, but please describe Restore's ability to 11:46:21    | 25 of contracts with other types of entities other than 11:49:14    |
| Page 138                                                            | Page 140                                                            |
| 1 finance the business of repairing X and Xi EndoWrists. 11:46:26   | 1 customers; correct? 11:49:19                                      |
| 2 A Well, all the money so far that's gone -- 11:46:30              | 2 A Yes. 11:49:20                                                   |
| 3 gone into the development has been investment by myself 11:46:38  | 3 Q What types of contracts are those? 11:49:20                     |
| 4 and Kevin May mostly. 11:46:42                                    | 4 A All we have right now is verbal agreements 11:49:21             |
| 5 So we've purchased the building; we've 11:46:46                   | 5 with Alliance Healthcare. 11:49:26                                |
| 6 paid Alliance; we've paid Marcus Engineering; we've 11:46:49      | 6 We do have a written statement of work, 11:49:27                  |
| 7 paid attorneys to do legal analysis, both on the 11:46:53         | 7 SOWs with Marcus Engineering to do development work, so 11:49:34  |
| 8 digital copyrights, we've filed for patents, paid 11:47:00        | 8 those are signed agreements. 11:49:38                             |
| 9 patent attorneys, and that's been money out of pocket. 11:47:05   | 9 We -- we have a distribution agreement 11:49:41                   |
| 10 So we have not brought in any investors 11:47:10                 | 10 with Medline that covers both the Si and Xi sales and 11:49:49   |
| 11 for the cash portion of the business, so I have the 11:47:13     | 11 distribution. 11:49:55                                           |
| 12 funds and Kevin has the funds to do so. 11:47:18                 | 12 Q Uh-huh. 11:49:59                                               |
| 13 Q Please describe any actual prospective 11:47:20                | 13 A That's currently in place right now. 11:50:01                  |
| 14 signing of contracts in connection with engaging in the 11:47:24 | 14 Q How confident are you that, you being 11:50:04                 |
| 15 repair -- the X and Xi EndoWrists repair business? 11:47:29      | 15 Restore, and its tech partners will be able to come up 11:50:07  |
| 16 MS. WINNER: Objection to form. 11:47:34                          | 16 with the technology to bypass the X and the Xi chip? 11:50:10    |
| 17 THE WITNESS: Hmm. 11:47:39                                       | 17 A Extremely. 11:50:13                                            |
| 18 MS. WINNER: Vague and ambiguous. 11:47:39                        | 18 MS. WINNER: Objection. Form. Lack of 11:50:14                    |
| 19 THE WITNESS: Are you asking about 11:47:40                       | 19 foundation. 11:50:21                                             |
| 20 contracts with customers or development contracts or 11:47:43    | 20 THE WITNESS: I'm extremely confident, I'm 11:50:21               |
| 21 all of the above? 11:47:47                                       | 21 a hundred percent confident. 11:50:25                            |
| 22 BY MR. CORRIGAN: 11:47:49                                        | 22 BY MR. CORRIGAN: 11:50:26                                        |
| 23 Q Oh, let's start with customers, do you 11:47:50                | 23 Q Where does that confidence come from? 11:50:26                 |
| 24 have any prospective customers that you can sign 11:47:51        | 24 A Our partners have been in this business 11:50:29               |
| 25 contracts with engaged in the X and Xi business? 11:47:55        | 25 for 20 some odd years, they've done much more 11:50:30           |
| Page 139                                                            | Page 141                                                            |

|                                                                     |                                                                     |
|---------------------------------------------------------------------|---------------------------------------------------------------------|
| 1 complicated systems by Johnson & Johnson, Bausch + 11:50:33       | 1 felt that, you know, we would have easily met the -- 11:53:57     |
| 2 Lomb, Webster, and many other large companies that have 11:50:39  | 2 January 2022 as a -- the time frame when we would be 11:54:05     |
| 3 more complicated technology, and they've been able to 11:50:46    | 3 able to be in the market and have the chip completed 11:54:07     |
| 4 defeat those technologies and reprocess, remanufacture 11:50:53   | 4 and ready to go. 11:54:17                                         |
| 5 those devices, and so -- 11:50:59                                 | 5 BY MR. CORRIGAN: 11:54:18                                         |
| 6 And then, secondarily, the Xi is extremely 11:51:02               | 6 Q I asked you a similar question, but this 11:54:18               |
| 7 similar to the Si with one exception, and that's RFID 11:51:07    | 7 one's a little different: How much do you estimate it 11:54:20    |
| 8 versus direct contact, so everything else is pretty 11:51:14      | 8 cost Restore to develop the technology to bypass the S 11:54:22   |
| 9 simple, it's just a -- you know, taking the time, 11:51:17        | 9 and Si chip? 11:54:26                                             |
| 10 putting the manpower on it. 11:51:22                             | 10 A I think we're in the \$1.2 million range. 11:54:27             |
| 11 So we're extremely, extremely confident we 11:51:23              | 11 Q And is it fair to say that you would have 11:54:33             |
| 12 can do it, and they've told us as much. 11:51:27                 | 12 spent or you have spent an extra two plus million 11:54:35       |
| 13 Q When did Restore first consider repairing 11:51:30             | 13 dollars in addition to that to develop capabilities for 11:54:39 |
| 14 Xi and X compatible EndoWrists, roughly? 11:51:33                | 14 the X and Xi chip? Is that right? 11:54:43                       |
| 15 A We were first contacted by Rebotix, or 11:51:38                | 15 MS. WINNER: Object -- objection. Form of 11:54:44                |
| 16 Kevin and Rebotix met, and I believe it was -- it was 11:51:44   | 16 the question. Leading. 11:54:47                                  |
| 17 April of 2018, and then sometime between April 2018 and 11:51:48 | 17 THE WITNESS: I wouldn't say it exactly 11:54:49                  |
| 18 October '18, we had the discussions with Rebotix to be 11:51:53  | 18 that way because like a -- you know, we spent \$400,000 11:54:55 |
| 19 their repair center. 11:52:01                                    | 19 to buy a building, and that building will be used for 11:55:00   |
| 20 So we were doing -- we started doing the 11:52:02                | 20 both Xi and Si. Now, I didn't count that, the 11:55:02           |
| 21 repairs for their customers, our customers, and any 11:52:04     | 21 building, in the Si development costs, so that -- but 11:55:07   |
| 22 other distributors starting in October of 2018. 11:52:09         | 22 easily \$3 million for both Xi and Si combined. 11:55:17         |
| 23 And then December of 2019, I think, is 11:52:14                  | 23 BY MR. CORRIGAN: 11:55:24                                        |
| 24 when we undertook our development efforts to develop 11:52:21    | 24 Q Now, you -- you were asked this in some 11:55:25               |
| 25 our technology. I think we got our first chips, our 11:52:25     | 25 respects by Ms. Winner earlier, but I'm going to try to 11:55:28 |
| Page 142                                                            | Page 144                                                            |
| 1 first boards developed and completed in June -- I 11:52:35        | 1 ask it again: How long did it take, roughly, for 11:55:33         |
| 2 believe June of 2020. 11:52:39                                    | 2 Restore to develop the technology to bypass the S and 11:55:35    |
| 3 Q Uh-huh. 11:52:41                                                | 3 Si chip? 11:55:41                                                 |
| 4 MS. WINNER: Could I ask to have that 11:52:43                     | 4 A A few months, so I think we started in 11:55:42                 |
| 5 question reread, please. 11:52:44                                 | 5 early 2022 and we were done by mid 2022. 11:55:48                 |
| 6 MR. CORRIGAN: Why is that? 11:52:48                               | 6 Q Are you planning to license your 11:55:52                       |
| 7 MS. WINNER: I -- I think you may have 11:52:50                    | 7 technology in that respect as did Rebotix? 11:55:57               |
| 8 misheard it, I could be wrong, but I'd like to hear it 11:52:53   | 8 A Not in the same manner. So we're 11:56:01                       |
| 9 back, maybe I misheard it. 11:52:55                               | 9 primarily utilizing very large distributors, so we 11:56:06       |
| 10 MR. CORRIGAN: I guess go ahead and read 11:53:01                 | 10 haven't finalized what that looks like yet, so we're 11:56:16    |
| 11 the question, please, although it's already been 11:53:03        | 11 waiting, you know, on a number of things, what's our 11:56:21    |
| 12 answered. 11:53:06                                               | 12 actual costs, our arrangement with Alliance, et cetera, 11:56:23 |
| 13 (Record read as follows: 11:53:06                                | 13 but -- but our plan is not to do like Rebotix and have 11:56:30  |
| 14 "Q When did Restore first consider 11:53:06                      | 14 a lot of little mom and pops out there being 11:56:37            |
| 15 repairing Xi and X compatible EndoWrists, 11:53:06               | 15 distributors. 11:56:41                                           |
| 16 roughly?") 11:53:28                                              | 16 Q Who owns the technology that allows the 11:56:41               |
| 17 BY MR. CORRIGAN: 11:53:28                                        | 17 EndoWrist usage counter to be reset? 11:56:46                    |
| 18 Q Mr. Parker, when would Restore have begun 11:53:29             | 18 MS. WINNER: Objection to form. Vague. 11:56:48                   |
| 19 to repair X and Xi compatible EndoWrists in a world 11:53:31     | 19 THE WITNESS: Restore Robotics Repair -- 11:56:53                 |
| 20 without Intuitive's anticompetitive behavior? 11:53:34           | 20 Restore Robotics Repairs and Restore Robotics have 11:56:58      |
| 21 MS. WINNER: Object to form and lack of 11:53:37                  | 21 founded all those efforts. Right now, the 510K is in 11:57:01    |
| 22 foundation. 11:53:41                                             | 22 the name of Iconocare, but all the development efforts, 11:57:10 |
| 23 THE WITNESS: So we -- we started in 2020, 11:53:41               | 23 at least for the Si, were all paid for by Restore 11:57:15       |
| 24 I guess we, in a -- in a but-for world, if that's what 11:53:52  | 24 Robotics. 11:57:22                                               |
| 25 you want to call it, we would have started in 2019, we 11:53:55  | 25 ///                                                              |
| Page 143                                                            | Page 145                                                            |

**EXHIBIT 16**

**to**

**PAUL D. BRACHMAN DECLARATION IN SUPPORT  
OF DEFENDANT'S MOTION IN LIMINE NO. 1  
TO EXCLUDE OUT-OF-COURT HOSPITAL  
STATEMENTS**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: DA VINCI SURGICAL ROBOT ) Lead Case No.:  
ANTITRUST LITIGATION ) 3:21-cv-03825-VC

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

SURGICAL INSTRUMENT SERVICE ) Case No.  
COMPANY, INC., ) 3:21-CV-03496-VC

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED  
DEPOSITION OF KEVIN MAY

Thursday, November 3, 2022  
Remotely Testifying from Yorba Linda, California

Stenographically Reported By:  
Hanna Kim, CLR, CSR No. 13083  
Job No. 5541214

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3  
4 IN RE: DA VINCI SURGICAL ROBOT ) Lead Case No.:  
ANTITRUST LITIGATION ) 3:21-cv-03825-VC  
5 )  
6 THIS DOCUMENT RELATES TO: )  
ALL ACTIONS )  
7 )  
8 SURGICAL INSTRUMENT SERVICE ) Case No.  
COMPANY, INC., ) 3:21-CV-03496-VC  
9 )  
Plaintiff, )  
10 )  
vs. )  
11 )  
INTUITIVE SURGICAL, INC., )  
12 )  
Defendant. )  
13 )  
14  
15 Virtual videoconference video-recorded  
16 deposition of KEVIN MAY remotely testifying from  
17 Yorba Linda, California, on Thursday, November 3,  
18 2022, beginning at 7:34 a.m., PDT, and concluding at  
19 12:35 p.m., pursuant to the stipulations of counsel  
20 thereof, before Hanna Kim, CLR, Certified Shorthand  
21 Reporter, No. 13083.  
22  
23  
24  
25

Page 2

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12 RAMON PERAZA, Videographer  
13  
14  
15  
16  
17  
18  
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21  
22  
23  
24  
25

Page 5

|    |                                               |              |    |                                                            |        |
|----|-----------------------------------------------|--------------|----|------------------------------------------------------------|--------|
| 1  | INDEX OF EXAMINATION                          |              | 1  | Remotely Testifying Yorba Linda, California                |        |
| 2  |                                               |              | 2  | Thursday, November 3, 2022; 7:34 a.m., PDT                 |        |
| 3  | WITNESS: KEVIN MAY                            |              | 3  | --o0o--                                                    |        |
| 4  | EXAMINATION                                   | PAGE         | 4  | THE VIDEOGRAPHER: Good morning. We are                     |        |
| 5  | BY MR. RUBY:                                  | 10           | 5  | on the record at 7:34 a.m. on November 3rd, 2022. 07:34:54 |        |
| 6  | BY MR. LAZEROW:                               | 64, 117, 147 | 6  | This is the video-recorded deposition of                   |        |
| 7  | BY MR. MAIDA:                                 | 73, 144      | 7  | Kevin May in the matter of Surgical Instrument             |        |
| 8  | BY MR. McCAULLEY:                             | 108          | 8  | Service Company, Inc. versus Intuitive Surgical,           |        |
| 9  |                                               |              | 9  | Inc. This case was filed in the United States              |        |
| 10 |                                               |              | 10 | District Court for the Northern District of 07:35:14       |        |
| 11 |                                               |              | 11 | California. Case Number 3:21-CV-03496-VC.                  |        |
| 12 |                                               |              | 12 | Please note that this deposition is being                  |        |
| 13 |                                               |              | 13 | conducted virtually. Quality of the recording              |        |
| 14 |                                               |              | 14 | depends on the quality of the camera and internet          |        |
| 15 |                                               |              | 15 | connection of participants. Audio and video 07:35:33       |        |
| 16 |                                               |              | 16 | recording will take place unless all parties have          |        |
| 17 |                                               |              | 17 | agree to go off the record.                                |        |
| 18 |                                               |              | 18 | My name is Ramon Peraza, here with our                     |        |
| 19 |                                               |              | 19 | court reporter, Hanna Kim. We're here from Veritext        |        |
| 20 |                                               |              | 20 | Legal Solutions at the request of counsel for the 07:35:49 |        |
| 21 |                                               |              | 21 | Defendant.                                                 |        |
| 22 |                                               |              | 22 | At this time, Counsel, please identify                     |        |
| 23 |                                               |              | 23 | yourselves for the record and state whom you               |        |
| 24 |                                               |              | 24 | represent.                                                 |        |
| 25 |                                               |              | 25 | MR. RUBY: My name is Allen Ruby. I 07:35:53                |        |
|    |                                               | Page 6       |    |                                                            | Page 8 |
| 1  | INDEX OF EXHIBITS                             |              | 1  | represent Intuitive Surgical.                              |        |
| 2  |                                               |              | 2  | MR. LAZEROW: Andrew Lazerow, Intuitive --                  |        |
| 3  | MAY DEPOSITION EXHIBITS                       | PAGE         | 3  | for Covington & Burling on behalf of Intuitive             |        |
| 4  | Exhibit 154 E-mail dated 5/26/2022, and 42    |              | 4  | Surgical with my colleague, Ayana Lindsey.                 |        |
| 5  | attachment, "Restore Robotics                 |              | 5  | MR. MAIDA: Samuel Maida on behalf of the 07:36:23          |        |
| 6  | Repairs Investor deck"; Bates                 |              | 6  | Hospital Plaintiffs from Hausfeld LLC.                     |        |
| 7  | nos. Restore-00094918 through                 |              | 7  | MR. McCAULLEY: Richard McCauley on                         |        |
| 8  | '94956                                        |              | 8  | behalf of Plaintiff SIS.                                   |        |
| 9  | Exhibit 155 E-mail set, with top e-mail 52    |              | 9  | MR. MAIDA: I'm joined by my colleagues                     |        |
| 10 | from Dana Gunn, 6/28/2022;                    |              | 10 | Jeff Corrigan and Jeannine Kenney. 07:36:31                |        |
| 11 | Bates nos. Restore-00091199                   |              | 11 | THE COURT REPORTER: Mr. Berhold?                           |        |
| 12 | through '00091202                             |              | 12 | MR. BERHOLD: Jeff Berhold for witness,                     |        |
| 13 | Exhibit 156 E-mail set, with top e-mail to 68 |              | 13 | Clif Parker [verbatim].                                    |        |
| 14 | Jitendra Virani, 7/21/2020;                   |              | 14 | I understood there were other plaintiffs                   |        |
| 15 | Bates nos. Restore-00001248                   |              | 15 | in attendance on the call. 07:36:45                        |        |
| 16 | through '1256                                 |              | 16 | THE WITNESS: For Kevin May, Jeff.                          |        |
| 17 | Plaintiffs' E-mail from James Rowley, 93      |              | 17 | THE COURT REPORTER: Excuse me.                             |        |
| 18 | Exhibit 1 9/1/2022; Bates nos.                |              | 18 | THE VIDEOGRAPHER: The court reporter may                   |        |
| 19 | Restore-00091362                              |              | 19 | now swear in the witness.                                  |        |
| 20 | --o0o--                                       |              | 20 | MR. BERHOLD: Well, I'm sorry. 07:36:54                     |        |
| 21 |                                               |              | 21 | That's -- sorry. Jeff Berhold for Kevin                    |        |
| 22 |                                               |              | 22 | May.                                                       |        |
| 23 |                                               |              | 23 | ///                                                        |        |
| 24 |                                               |              | 24 | ///                                                        |        |
| 25 |                                               |              | 25 | ///                                                        |        |
|    |                                               | Page 7       |    |                                                            | Page 9 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. Yes.</p> <p>2 Q. Okay. So in that conversation, you told</p> <p>3 her that you believed you did not need a 510(k)</p> <p>4 because Restore did not take ownership of the</p> <p>5 instruments; is that right? 09:38:16</p> <p>6 A. Yes. And I told her that I've been in the</p> <p>7 business of 30 -- 30-plus years of servicing medical</p> <p>8 devices, and that I'm very familiar with what the</p> <p>9 requirements are for repair versus remanufacturing</p> <p>10 because I'm also -- have six 510(k)s, so I'm very 09:38:33</p> <p>11 familiar with the reman- -- with the manufacturing</p> <p>12 process. And that -- I explained all that to her.</p> <p>13 And I told her that I had extensive in- --</p> <p>14 knowledge in the repair business. And she said that</p> <p>15 she didn't have any experience in the repair 09:38:53</p> <p>16 business at all. She only had experience in the</p> <p>17 robotic space for manufacturing.</p> <p>18 Q. Okay. And so after you told her all of</p> <p>19 that, she wrote this e-mail where she told you that</p> <p>20 FDA believes that a 510(k) needed -- is needed 09:39:13</p> <p>21 before you continue your operation; right?</p> <p>22 A. No. She stipulated that based on what was</p> <p>23 said on the e- -- on the website, she -- she based</p> <p>24 her decision on what she read on the website as</p> <p>25 opposed to what I told her. 09:39:29</p> <p style="text-align: right;">Page 70</p> | <p>1 Has any entity relating to Restore,</p> <p>2 whether it's Restore Robotics or Restore Robotics</p> <p>3 Repair [verbatim], sold an EndoWrist that has been</p> <p>4 reset since February 20th, 2020?</p> <p>5 MR. MAIDA: Object to form. 09:41:41</p> <p>6 THE WITNESS: Not where we've taken</p> <p>7 ownership; only repairs.</p> <p>8 BY MR. LAZEROW:</p> <p>9 Q. And has -- since February 20th, 2020, the</p> <p>10 e-mail we're looking at, has any entity related to 09:41:56</p> <p>11 Restore reset the use counter for an EndoWrist that</p> <p>12 it does not own?</p> <p>13 A. No, we have not. I believe we've stopped.</p> <p>14 Intuitive had stopped us from repairing anything by</p> <p>15 keeping us out of the market. So I believe we -- 09:42:18</p> <p>16 we'd lost most of our customers by November --</p> <p>17 October/November of 2019.</p> <p>18 Q. Have you ever talked directly to Intuitive</p> <p>19 about the resetting activities that Restore has</p> <p>20 engaged in? 09:42:45</p> <p>21 A. No.</p> <p>22 Q. Have you ever worked at FDA?</p> <p>23 A. No.</p> <p>24 Q. Have you ever submitted an expert report</p> <p>25 in litigation where your expert report gave opinions 09:42:58</p> <p style="text-align: right;">Page 72</p> |
| <p>1 Q. And did -- has FDA ever told you -- agreed</p> <p>2 with you, that -- that as long as you don't take</p> <p>3 ownership of the instruments, that you do not need a</p> <p>4 510(k) clearance?</p> <p>5 A. I have been informed that they refuse to 09:39:49</p> <p>6 make a decision on that. So they have decided not</p> <p>7 to make a decision on that. And that was in</p> <p>8 reference to, I believe, Rebotix.</p> <p>9 Q. Okay. I'm -- I'm asking you just, has FDA</p> <p>10 ever told you that as long as you maintain -- you 09:40:11</p> <p>11 don't own the instrument, then you don't need a</p> <p>12 510(k) in order to extend the li- -- the lives of an</p> <p>13 EndoWrist instrument?</p> <p>14 A. They haven't told us, one way or another.</p> <p>15 And Dr. -- Dr. An is not part of the enforcement 09:40:26</p> <p>16 division of the FDA.</p> <p>17 Q. Has -- has FDA ever told you you don't</p> <p>18 need a 510(k) clearance in order to extend the</p> <p>19 li- -- the lives of an EndoWrist instrument?</p> <p>20 A. That's not the way the FDA works, no. 09:40:44</p> <p>21 They've never told us, one way or another.</p> <p>22 Q. Has Re- -- has Restore or any Restore</p> <p>23 entity, whether it's Restore Robotics or Restore</p> <p>24 Robotics Repair [verbatim] reset the EndoWrist</p> <p>25 instruments -- sorry, let me start over. 09:41:19</p> <p style="text-align: right;">Page 71</p>                                  | <p>1 about FDA regulatory matters?</p> <p>2 A. No.</p> <p>3 MR. LAZEROW: I'm going to pass the</p> <p>4 witness and reserve the rest of my time, if</p> <p>5 necessary, for later. Thank you. I don't have any 09:43:18</p> <p>6 questions at this time, but I'll reserve for after</p> <p>7 the Plaintiffs, if necessary.</p> <p>8 Thank you for your time.</p> <p>9 THE COURT REPORTER: May we go off the</p> <p>10 record to do an audio check, please. 09:43:30</p> <p>11 THE VIDEOGRAPHER: Are we closing this</p> <p>12 deposition, though?</p> <p>13 MR. LAZEROW: No. No, I don't think so.</p> <p>14 THE VIDEOGRAPHER: No? All right.</p> <p>15 We're off the record at 9:43 a.m. 09:43:39</p> <p>16 (Short recess taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 10:07 a.m.</p> <p>19 EXAMINATION</p> <p>20 BY MR. MAIDA: 10:07:49</p> <p>21 Q. Hello, Mr. May.</p> <p>22 A. Hello.</p> <p>23 Q. My name is Sam Maida, and I represent the</p> <p>24 Hospital Plaintiffs. We have a case that is</p> <p>25 substantially similar to Restore's case, and I have 10:08:03</p> <p style="text-align: right;">Page 73</p>                                                                                                                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>1 a few more questions for you. But I hope that I<br/> 2 won't take more of your time -- too much more of<br/> 3 your time.</p> <p>4 Do you believe Restore's business has been<br/> 5 harmed by Intuitive? 10:08:21</p> <p>6 MR. LAZEROW: Objection.</p> <p>7 THE WITNESS: Yes. It's been harmed<br/> 8 significantly.</p> <p>9 BY MR. MAIDA:</p> <p>10 Q. Please tell me how did Intuitive harm 10:08:30<br/> 11 Restore's business.</p> <p>12 MR. LAZEROW: Objection.</p> <p>13 THE WITNESS: As soon as we were able to<br/> 14 land an account, shortly thereafter, we were told by<br/> 15 the hospital that the Intuitive rep would come in 10:08:45<br/> 16 and tell them that they couldn't work with us.</p> <p>17 BY MR. MAIDA:</p> <p>18 Q. Anything else?</p> <p>19 A. Clif is a better person to discuss that<br/> 20 with. He's had more -- he has more direct contacts 10:09:05<br/> 21 with the hospitals and whatnot. There have been a<br/> 22 few cases, so, for instance, I was in discussion<br/> 23 with some people from Memorial Care, and I asked<br/> 24 them -- I told them about what our service was. And<br/> 25 they said that they would look into it. They looked 10:09:25<br/> Page 74</p>                                                                                                                                               | <p>1 development for the Xi.</p> <p>2 BY MR. MAIDA:</p> <p>3 Q. I'd like to talk to you a bit about<br/> 4 Restore's EndoWrist business. Can you please<br/> 5 describe the type of Xi EndoWrist that Restore has 10:11:14<br/> 6 been able to repair?</p> <p>7 A. Yes. There is -- there is a list that we<br/> 8 had from Rebotix that we've been trained on, how to<br/> 9 repair the instruments. And there was 38 Si<br/> 10 instruments that we were able to repair. 10:11:33</p> <p>11 Q. Is there a common theme linking the<br/> 12 EndoWrists that Restore has been able to repair?</p> <p>13 MR. LAZEROW: Objection. Vague.</p> <p>14 THE WITNESS: Yes. Multiuse instruments.<br/> 15 So instruments that are able to be used at least ten 10:11:49<br/> 16 times. And I think there was a couple of them -- a<br/> 17 couple instruments that had higher usages. I<br/> 18 believe they were clip applicators. We were able to --<br/> 19 to repair all of those.</p> <p>20 BY MR. MAIDA: 10:12:17</p> <p>21 Q. You -- you went into my next question a<br/> 22 bit. But I'd like to know, can all or only a subset<br/> 23 of EndoWrist models be repaired?</p> <p>24 A. Only a subset. So all of the Si<br/> 25 instruments, all -- all of the 8 millimeters, except 10:12:31<br/> Page 76</p> |
| <p>1 into it, and they said that it was risky for them<br/> 2 because they were really concerned that Intuitive<br/> 3 was going to cut off their business, and they didn't<br/> 4 want to be involved with that. That was a phone<br/> 5 call. 10:09:43</p> <p>6 And then there was a company, this was<br/> 7 through our rep, Scott. He talked to Pacific,<br/> 8 and -- and Pacific said that Intuitive said that<br/> 9 they could not use our services. So those are some<br/> 10 examples that I had some fairly direct contacts 10:10:02<br/> 11 with. So there were several instances.</p> <p>12 Then there was also a cease and desist<br/> 13 letter that we received from Intuitive Surgical.<br/> 14 And then I had heard that there were other cease and<br/> 15 desist letters to Rebotix and to other customers. 10:10:18</p> <p>16 Q. Thank you.</p> <p>17 Did that harm cause any delay to Restore's<br/> 18 business?</p> <p>19 MR. LAZEROW: Objection. Speculation.</p> <p>20 THE WITNESS: Well, it absolutely caused 10:10:34<br/> 21 delays and harm to our business. We had been<br/> 22 counting on the revenues that we were generating<br/> 23 from the repair business to fund being able to do<br/> 24 additional R&amp;D efforts, to grow the business, and to<br/> 25 grow the Xi business and to do the research and 10:10:57<br/> Page 75</p> | <p>1 for a few of the devices. Like we do not do the<br/> 2 staplers. We did not repair the -- the staplers.<br/> 3 And we did not repair any of the disposable devices.</p> <p>4 Q. Are there any EndoWrists that could not be<br/> 5 repaired? 10:12:55</p> <p>6 A. You mean, particular reference numbers or?</p> <p>7 Q. Any EndoWrists, generally, that could not<br/> 8 be repaired.</p> <p>9 A. There were EndoWrists that were the<br/> 10 reusable type that we -- we did not repair. But in 10:13:10<br/> 11 the future, we could have, if we did some R&amp;D<br/> 12 efforts.</p> <p>13 Q. Okay. You testified a bit earlier about<br/> 14 when Restore stopped the -- their EndoWrist repairs.</p> <p>15 Was that in 2019? 10:13:32</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And since 2019, Restore has not<br/> 18 done any EndoWrist repair; is that correct?</p> <p>19 A. We have done repairs that did not require<br/> 20 resetting the counter. 10:13:52</p> <p>21 Q. Okay. Was there any repairs that required<br/> 22 resetting the counters?</p> <p>23 A. No.</p> <p>24 Q. Was there any repairs that Restore<br/> 25 actually sent back to the hospitals for use? 10:14:10<br/> Page 77</p>                                                                                              |

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| <p>1 A. No.</p> <p>2 Q. And why is that?</p> <p>3 A. Our customers were too afraid to send us</p> <p>4 the business.</p> <p>5 Q. Would the scope of reparable Si EndoWrists 10:14:26</p> <p>6 have extended in -- overall without Intuitive's</p> <p>7 anticompetitive conduct?</p> <p>8 MR. LAZEROW: Objection.</p> <p>9 THE WITNESS: Yes. We would have -- we</p> <p>10 would have expanded few more of the 8-millimeter and 10:14:38</p> <p>11 5-millimeter EndoWrists.</p> <p>12 BY MR. MAIDA:</p> <p>13 Q. And go back about -- to your answer that</p> <p>14 customers were afraid. Why were they afraid?</p> <p>15 MR. LAZEROW: Objection. 10:14:56</p> <p>16 THE WITNESS: Because they received cease</p> <p>17 and desist letters from Intuitive, was one of the</p> <p>18 things. Another thing was is that our understanding</p> <p>19 from the information from the hospitals was is that</p> <p>20 the Intuitive reps were coming in -- as soon as they 10:15:12</p> <p>21 figured out that there was a particular serial</p> <p>22 number that had been used more than the maximum</p> <p>23 number of uses on the device, the Intuitive rep</p> <p>24 would come in and tell the hospital that they were</p> <p>25 under contract and they could not use any other 10:15:31</p> <p style="text-align: right;">Page 78</p> | <p>1 Q. And what do you base that belief on?</p> <p>2 A. The repair aspect is very defined. And it</p> <p>3 has do with ownership of the device. So the device,</p> <p>4 if it's owned by the hospital, if it comes to us as</p> <p>5 a third party and the hospital creates a PO and 10:17:31</p> <p>6 requests us to repair the device, we repair the</p> <p>7 device and return it back to the hospital.</p> <p>8 We do not -- there's no change of</p> <p>9 ownership, so there's no labeling requirements,</p> <p>10 there's no remanufacturing requirements as of today. 10:17:50</p> <p>11 And so, we could go through and repair all of the</p> <p>12 instruments without having any -- any requirements</p> <p>13 of -- to get a 510(k) for the repair process, where</p> <p>14 we do not take ownership.</p> <p>15 Q. Does your experience in the repair 10:18:06</p> <p>16 industry also plays [verbatim] a role in your belief</p> <p>17 that there is no necessity for 510(k) clearance to</p> <p>18 repair EndoWrists?</p> <p>19 MR. LAZEROW: Objection.</p> <p>20 THE WITNESS: Yes. So I have been in the 10:18:23</p> <p>21 medical repair device industry since 1989. So I've</p> <p>22 been doing this for 33 years.</p> <p>23 And we have been doing repair, as well as</p> <p>24 manufacturing. I currently have six 510(k)s so I'm</p> <p>25 well aware of the manufacturing process, as well as 10:18:49</p> <p style="text-align: right;">Page 80</p>                           |
| <p>1 third parties.</p> <p>2 BY MR. MAIDA:</p> <p>3 Q. And those hospitals told you or someone at</p> <p>4 Restore that; is that correct?</p> <p>5 A. Either directly or through one of our 10:15:43</p> <p>6 reps.</p> <p>7 Q. How long did it take for Restore to</p> <p>8 develop the technology to bypass the S and Si chip?</p> <p>9 A. We started work on that in January 2020, I</p> <p>10 believe it was. And we had our first usage counters 10:16:11</p> <p>11 samples by, I believe it was June of 2020. So about</p> <p>12 six months or so.</p> <p>13 Q. Now, I'd like to talk to you a bit about</p> <p>14 Restore's 510(k) clearance. You testified earlier</p> <p>15 that Restore currently does have 510(k) clearance 10:16:39</p> <p>16 for the Si EndoWrist remanufacturing?</p> <p>17 MR. LAZEROW: Objection. Mischaracterizes</p> <p>18 testimony.</p> <p>19 BY MR. MAIDA:</p> <p>20 Q. Does Restore currently have the 510(k) -- 10:16:50</p> <p>21 510(k) clearance for EndoWrist remanufacturing?</p> <p>22 A. We have 510(k) for the 420179 EndoWrist.</p> <p>23 Q. Okay. Does Restore believe it needs</p> <p>24 510(k) clearance to repair EndoWrists?</p> <p>25 A. No, we do not. 10:17:11</p> <p style="text-align: right;">Page 79</p>                                                                     | <p>1 the repair process, and also the repair of third</p> <p>2 parties.</p> <p>3 So, for instance, where you have an</p> <p>4 instrument -- let me take a -- a rigid scope, for</p> <p>5 example. You have a Karl Storz rigid scope, and 10:19:04</p> <p>6 then you repair it, and then -- the hospital sends</p> <p>7 it to you. The hospital owns it. You do the</p> <p>8 repair. And then you send it back to the hospital.</p> <p>9 That is a repair, and it's not regulated by the FDA.</p> <p>10 I've been doing that for 33 years. 10:19:18</p> <p>11 The devices that I've been working on for</p> <p>12 the last 33 years are much more complex than the</p> <p>13 current EndoWrist device. And so, based on 33 years</p> <p>14 of -- of knowledge, I've been through at least four</p> <p>15 FDA audits where the aud- -- where the FDA has 10:19:40</p> <p>16 audited our third-party servicing business. I've</p> <p>17 been through California FDB audits where they have</p> <p>18 audited our servicing. I've been through multiple</p> <p>19 vendor audits such as Johnson and Johnson, Richard</p> <p>20 Wolf, Medtronic. 10:20:05</p> <p>21 Many, many large companies have done</p> <p>22 audits of our facility and audited our quality</p> <p>23 system and our practices, and we've had zero</p> <p>24 complaints for -- zero -- zero MAUDE events and zero</p> <p>25 recalls and zero MAUDE events in the 33 years that 10:20:24</p> <p style="text-align: right;">Page 81</p> |

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| <p>1 A. I'm not sure I understand the question.</p> <p>2 Q. Do I understand correctly that the Si</p> <p>3 process that is used in order to reset an Si</p> <p>4 instrument involves Restore adding a -- a circuit</p> <p>5 board? 12:05:52</p> <p>6 A. If we are resetting the counter or</p> <p>7 replacing the counter, yes.</p> <p>8 Q. Yeah. I'm -- I'm focused on the resetting</p> <p>9 of the counter, for sure. So let me see if I can</p> <p>10 ask it again. 12:06:10</p> <p>11 For the Xi process that Restore intends to</p> <p>12 use to reset the lives of an Xi instrument, does</p> <p>13 Restore anticipate that it will be adding a circuit</p> <p>14 board?</p> <p>15 MR. MAIDA: Object to form. 12:06:25</p> <p>16 THE WITNESS: We will be replacing the</p> <p>17 circuit board, so we will be removing the original</p> <p>18 and replacing it with ours.</p> <p>19 BY MR. LAZEROW:</p> <p>20 Q. Okay. You're -- you're clearer than I was 12:06:34</p> <p>21 able to ask the question. Thank you.</p> <p>22 You said that you have, I think you own</p> <p>23 six 510(k)s; is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. Are those -- are any of those for 12:06:50</p> <p style="text-align: right;">Page 134</p> | <p>1 government to come in and audit your facility. Or</p> <p>2 if you want to sell your product in Korea, you have</p> <p>3 to have the Korean equivalent of the FDA come in and</p> <p>4 audit your facility.</p> <p>5 And it was a -- it's a program put 12:08:18</p> <p>6 together by the FDA where it's one audit. I believe</p> <p>7 it's done by the FDA. But it's one program, so that</p> <p>8 once you pass it, the other countries recognize it,</p> <p>9 so they don't have to have an additional audit at</p> <p>10 your facility. 12:08:35</p> <p>11 Q. And remind me, is the Arizona facility</p> <p>12 owned by Iconocare?</p> <p>13 A. That is Innovative Health.</p> <p>14 Q. Oh, I'm sorry.</p> <p>15 The Arizona facility -- facility is owned 12:08:45</p> <p>16 by Innovative Health; is that right?</p> <p>17 A. That is correct.</p> <p>18 Q. Was -- do -- to your knowledge, was that</p> <p>19 audit -- did that audit come about as a result of</p> <p>20 the 510(k) application for the Si MCS by Iconocare? 12:08:55</p> <p>21 A. No.</p> <p>22 MR. MAIDA: Object to form.</p> <p>23 BY MR. LAZEROW:</p> <p>24 Q. So it's unrelated, to your knowledge?</p> <p>25 A. It's unrelated. 12:09:05</p> <p style="text-align: right;">Page 136</p>                                                                          |
| <p>1 remanufacturing of -- of devices that were</p> <p>2 originally manufactured by another entity?</p> <p>3 A. No.</p> <p>4 Q. So of the six 510(k)s you have, none are</p> <p>5 for remanufacturing; is that fair? 12:07:07</p> <p>6 A. That's correct.</p> <p>7 Q. Has the FDA done an audit of your Las</p> <p>8 Vegas facility?</p> <p>9 A. No.</p> <p>10 Q. Has the FDA done an audit of the Arizona 12:07:15</p> <p>11 facility?</p> <p>12 A. Yes.</p> <p>13 Q. When was that?</p> <p>14 A. They had one a couple months ago. I</p> <p>15 believe it was an NSAP audit by the FDA. 12:07:37</p> <p>16 Q. What -- did you say MSAP [verbatim]?</p> <p>17 A. I believe it's what it's called.</p> <p>18 Q. What is -- whether -- what is -- what</p> <p>19 is -- what is your understanding of what that kind</p> <p>20 of audit is? 12:07:43</p> <p>21 A. So the FDA has a new program that allows</p> <p>22 you to have a multi-jurisdictional audit. So it --</p> <p>23 it's been tricky when you manufacture a device. And</p> <p>24 so, when you manufacture a device and you want to</p> <p>25 sell it in Canada, you then have to get the Canadian 12:08:00</p> <p style="text-align: right;">Page 135</p>                                | <p>1 Q. Am I right that if Restore receives an</p> <p>2 EndoWrist from a hospital with a purchase order to</p> <p>3 repair the EndoWrist, as you have described the</p> <p>4 repair process that you're talking about, Restore</p> <p>5 is -- Restore is permitted to reset the lives of 12:09:31</p> <p>6 that EndoWrist as many -- to as many lives as it</p> <p>7 wants; is that right?</p> <p>8 A. The FDA does not regulate the -- the</p> <p>9 repairs.</p> <p>10 Q. So Restore could reset an EndoWrist 12:09:45</p> <p>11 instead of ten more lives, it could reset it to 25;</p> <p>12 correct?</p> <p>13 A. That's not our process. But</p> <p>14 theoretically, it could, but that's not what we do.</p> <p>15 Q. Right. 12:10:01</p> <p>16 From your perspective, you wouldn't be --</p> <p>17 you would -- you would not be violating any FDA</p> <p>18 regulations or guidelines were Restore to do that;</p> <p>19 is that fair?</p> <p>20 A. Well, the -- the robot wouldn't recognize 12:10:11</p> <p>21 it if you -- if you set it for more than ten lives,</p> <p>22 so we would never do that.</p> <p>23 Q. Okay. And am I right that as long as the</p> <p>24 hospital continues to own it, own -- own an</p> <p>25 instrument, they can send that instrument back to 12:10:22</p> <p style="text-align: right;">Page 137</p> |



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| <p>1 Restore as many times as they want for a reset to<br/>2 ten lives?</p> <p>3 A. Yes, depending on what policy we establish<br/>4 as to what we decide how many times we're willing to<br/>5 reset it as a -- as a repair company. 12:10:37</p> <p>6 Q. Does -- does Restore currently have such a<br/>7 policy?</p> <p>8 A. When we were doing the work for Rebotix,<br/>9 the -- the policy was they had done testing up to, I<br/>10 believe, 29 verifications, verification and 12:10:56<br/>11 validation. So that would be three -- that would be<br/>12 two additional resets. And then they did additional<br/>13 cleaning and sterilization validation for at least<br/>14 50 uses.</p> <p>15 And so, we felt comfortable doing two. 12:11:15</p> <p>16 But we never did enough business to where we had<br/>17 repeat -- we had repeats, so -- repeat business. So<br/>18 we never did that. We never executed on any of<br/>19 that.</p> <p>20 Q. What about sitting here today, does 12:11:27<br/>21 Restore have a policy for how many times it will<br/>22 reset the life of a -- of an instrument -- of an<br/>23 En- -- EndoWrist instrument?</p> <p>24 A. Well, currently, the decision is is that<br/>25 we're going to be remanufacturing through the 12:11:39<br/>Page 138</p> | <p>1 doing; correct?</p> <p>2 MR. MAIDA: Object.</p> <p>3 THE WITNESS: After they've been properly<br/>4 inspected and tested, yes.</p> <p>5 BY MR. LAZEROW: 12:13:09</p> <p>6 Q. You talked, I think at the very beginning<br/>7 of -- of -- of the -- of the Plaintiffs'<br/>8 examination, about cease and desist letters that had<br/>9 been sent to hospitals. You said you had heard that<br/>10 there have been hospitals that have received cease 12:13:21<br/>11 and desist letters from Intuitive.</p> <p>12 Do you remember that?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever actually seen the one that<br/>15 was sent by Intuitive to a hospital? 12:13:29</p> <p>16 A. I have not seen the actual letter, no.</p> <p>17 Q. You were told that -- that -- that -- you<br/>18 were told by folks at hospitals that they received<br/>19 such a letter?</p> <p>20 A. Yes. 12:13:53</p> <p>21 Q. Which hospital told you that -- that they<br/>22 had received a letter from Intuitive?</p> <p>23 A. I never spoke to a hospital directly. It<br/>24 was either through a rep or it was through somebody<br/>25 else at Restore. 12:14:19<br/>Page 140</p> |
| <p>1 facility at Scottsdale, Arizona. And the clearance<br/>2 is only for one additional reset.</p> <p>3 Q. So were -- is -- is what you're saying,<br/>4 were Restore to take an EndoWrist that has already<br/>5 been remanufactured once and do it a second time, 12:12:03<br/>6 that would be in violation of that -- of its 510(k)<br/>7 clearance with the FDA; is that what you're saying?</p> <p>8 MR. MAIDA: Object to form.</p> <p>9 THE WITNESS: Without any additional<br/>10 testing; correct. 12:12:17</p> <p>11 BY MR. LAZEROW:</p> <p>12 Q. And -- but -- but as long as the hospital<br/>13 owns a -- owns an EndoWrist, they can send it to you<br/>14 for as many resets as -- as Restore is willing to<br/>15 do? 12:12:31</p> <p>16 A. Theoretically, yes.</p> <p>17 Q. Well, not theoretically; actual; correct?</p> <p>18 A. Well, we haven't done any more than one<br/>19 reset.</p> <p>20 Q. Right. I -- I -- and I understand. 12:12:43</p> <p>21 You -- what -- but I'm based on -- based<br/>22 on what you know and all you've been talking about<br/>23 today, you -- Restore actually could reset them as<br/>24 many times as they wanted without running afoul with<br/>25 the FDA based on your view of -- of what you're 12:12:54<br/>Page 139</p>                | <p>1 Q. And then you talked about -- one of the<br/>2 hospitals that you talked about was Mem- -- Memorial<br/>3 Care.</p> <p>4 Did I hear that right?</p> <p>5 A. Yes. 12:14:30</p> <p>6 Q. Did you talk to Memorial Care directly?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Who was it at Memorial Care who you<br/>9 talked to about whether they were going to use<br/>10 Restore's repair business? 12:14:43</p> <p>11 A. Aaron Coley.</p> <p>12 THE COURT REPORTER: Can you say that<br/>13 again, please.</p> <p>14 THE WITNESS: Aaron Coley.</p> <p>15 BY MR. LAZEROW: 12:15:00</p> <p>16 Q. And I think in sum or substance, you said<br/>17 that -- that Mr. Coley conveyed to you that it was<br/>18 risky for Memorial to do that because Intuitive<br/>19 would cut off their business. Is that fair?</p> <p>20 A. There was strong concern as to the 12:15:13<br/>21 aggressiveness of Intuitive and that they would cut<br/>22 their business off and that would be unacceptable<br/>23 risk to them.</p> <p>24 Q. And did you explain to -- to Mr. Coley<br/>25 that Restore was engaged in repairs that it was 12:15:30<br/>Page 141</p>                    |



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| <p>1 permitted to do?</p> <p>2 A. Yes.</p> <p>3 Q. And -- and you still were unable to</p> <p>4 convince him to -- to use your repair business; is</p> <p>5 that right? 12:15:42</p> <p>6 A. He was too afraid of the repercussions</p> <p>7 from Intuitive.</p> <p>8 Q. Was there anyone from Intuitive present</p> <p>9 for that conversation?</p> <p>10 A. No. It was via phone call. 12:15:51</p> <p>11 Q. Did you follow up with Intuitive to find</p> <p>12 out if they had said anything to Memorial Care?</p> <p>13 A. I did not.</p> <p>14 Q. Do you know if anyone at Restore did?</p> <p>15 A. Nobody did. 12:16:03</p> <p>16 Q. Okay. And then there was a -- there was</p> <p>17 another hospital you mentioned, Pacific. Do you</p> <p>18 remember mentioning that one?</p> <p>19 A. Yes.</p> <p>20 Q. And I think you said that there was a rep 12:16:11</p> <p>21 by the name of Scott, who had -- who had conveyed to</p> <p>22 folks at Restore something about Intuitive and</p> <p>23 Pacific? Did I hear --</p> <p>24 A. Yes.</p> <p>25 Q. -- that right? 12:16:23</p> <p style="text-align: right;">Page 142</p>                                                    | <p>1 discussions?</p> <p>2 MR. MAIDA: Object to form.</p> <p>3 THE WITNESS: Not that I can think of, no.</p> <p>4 MR. LAZEROW: Okay. Can we take a</p> <p>5 five-minute break so I can just look at my notes, 12:17:44</p> <p>6 and then I'm hoping I'm done.</p> <p>7 THE VIDEOGRAPHER: We are off the record</p> <p>8 at 12:17 p.m.</p> <p>9 (Short recess taken.)</p> <p>10 THE VIDEOGRAPHER: We are back on the 12:31:17</p> <p>11 record at 12:31 p.m.</p> <p>12 MR. LAZEROW: Mr. May, I don't have any</p> <p>13 more questions at this time. Unfortunately for you,</p> <p>14 I still have a little bit of time reserved. And so,</p> <p>15 if the plaintiffs ask further questions, I may have 12:31:41</p> <p>16 more questions. But at this time, I am -- I will</p> <p>17 pass the witness.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MR. MAIDA:</p> <p>20 Q. Mr. May, this is Sam Maida again. I only 12:31:49</p> <p>21 have a few more questions for you.</p> <p>22 Is it fair to say that if there was a</p> <p>23 complaint for an EndoWrist repair by Restore, that</p> <p>24 would be on the MAUDE database?</p> <p>25 A. Yes, if there was a formal complaint made 12:32:01</p> <p style="text-align: right;">Page 144</p> |
| <p>1 Who -- do you remember the last name of</p> <p>2 that person?</p> <p>3 A. Lewis.</p> <p>4 Q. And is that a person who works for</p> <p>5 Restore? 12:16:32</p> <p>6 A. He was an independent distributor.</p> <p>7 Q. And -- and he had talked to someone at</p> <p>8 Pacific?</p> <p>9 A. Yes.</p> <p>10 Q. Do -- do you know who? 12:16:39</p> <p>11 A. I can't remember the name.</p> <p>12 Q. And do you recall what Mr. Lewis told you</p> <p>13 that Pacific told him?</p> <p>14 A. They -- they were told that they could not</p> <p>15 use any third party, and I believe that was a 12:16:57</p> <p>16 hospital that said they received a cease and desist</p> <p>17 letter, but I can't be a hundred percent certain on</p> <p>18 that.</p> <p>19 Q. Did anyone from Restore, to your</p> <p>20 knowledge, follow up with Intuitive to find out what 12:17:15</p> <p>21 Intuitive had said, if anything, to Pacific?</p> <p>22 A. No.</p> <p>23 Q. Did I miss any other hospitals that you've</p> <p>24 talked about, that Restore had heard either directly</p> <p>25 or through a representative about Intuitive 12:17:29</p> <p style="text-align: right;">Page 143</p> | <p>1 by a hospital or the manufacturer or us, it would be</p> <p>2 on the MAUDE database.</p> <p>3 Q. And you testified earlier that Restore</p> <p>4 used to check the MAUDE database every six months;</p> <p>5 is that correct? 12:32:22</p> <p>6 A. Yes, while we were doing the repair</p> <p>7 business, yes.</p> <p>8 Q. Has anybody at Restore checked the MAUDE</p> <p>9 database after the end of repairs in approximately</p> <p>10 the end of 2019? 12:32:33</p> <p>11 A. Not that I know of.</p> <p>12 Q. Are you aware of when the last time anyone</p> <p>13 at Restore checked the MAUDE database?</p> <p>14 A. I don't know off the top of my head. It</p> <p>15 was usually done at the beginning of the year and 12:32:49</p> <p>16 in, like, June.</p> <p>17 Q. The last time that anybody at Restore</p> <p>18 checked the MAUDE database, were there any</p> <p>19 reports --</p> <p>20 A. No. 12:33:08</p> <p>21 Q. -- filed for the EndoWrists repaired by</p> <p>22 Restore?</p> <p>23 A. No.</p> <p>24 Q. In your experience, would a hospital not</p> <p>25 let Restore know if it had a problem with its 12:33:20</p> <p style="text-align: right;">Page 145</p>                                                   |

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| <p>1 repaired EndoWrists?</p> <p>2 MR. LAZEROW: Objection.</p> <p>3 THE WITNESS: The hospitals keep control</p> <p>4 of the serial numbers. So they would -- part of</p> <p>5 their process is, they would go back and they would 12:33:34</p> <p>6 look at the last purchase order associated with the</p> <p>7 serial number of a device. And they would contact</p> <p>8 us in normal course. That's -- that's the</p> <p>9 experience I've had in the endoscope business and</p> <p>10 the other medical devices that I've been doing 12:33:49</p> <p>11 business with in the last 30 plus years.</p> <p>12 BY MR. MAIDA:</p> <p>13 Q. Have you or anyone at Restore ever seen a</p> <p>14 complaint at any time on the MAUDE database for the</p> <p>15 EndoWrists repaired by Restore? 12:34:04</p> <p>16 A. No.</p> <p>17 Q. You testified earlier that Restore</p> <p>18 specifically does not have 510(k); correct? Is</p> <p>19 that --</p> <p>20 A. Its own -- it's technically registered to 12:34:18</p> <p>21 Iconocare currently.</p> <p>22 Q. Okay. And is Iconocare working under the</p> <p>23 direction of Restore?</p> <p>24 A. Yes.</p> <p>25 Q. Has Iconocare's efforts to obtain 510(k) 12:34:32</p> <p style="text-align: right;">Page 146</p> | <p>1 THE VIDEOGRAPHER: This is the end of</p> <p>2 today's deposition of Mr. Kevin May. We are off the</p> <p>3 record at 12:35 p.m. The total number of media used</p> <p>4 was six, and it will be retained by Veritext. Thank</p> <p>5 you.</p> <p>6 (Proceedings concluded, 12:35 p.m., PDT,</p> <p>7 on November 3, 2022.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 148</p>                                                                                                                                                  |
| <p>1 been funded by Restore?</p> <p>2 A. Yes.</p> <p>3 Q. Does Restore's repair process returns</p> <p>4 [verbatim] the EndoWrist to the same function --</p> <p>5 functional equivalency as new EndoWrists? 12:34:48</p> <p>6 A. Yes.</p> <p>7 MR. MAIDA: I don't have any further</p> <p>8 questions at this time. Thank you, Mr. May.</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MR. LAZEROW: 12:34:57</p> <p>11 Q. How much has Restore paid Iconocare as</p> <p>12 part of its effort to receive -- as part of</p> <p>13 Iconocare's effort to get 510(k) clearance for the</p> <p>14 Si MCS?</p> <p>15 A. I believe all of the funding and payments 12:35:14</p> <p>16 have gone to either Alliance or Innovative Health,</p> <p>17 not directly to Iconocare.</p> <p>18 Q. And how much have those payments been for</p> <p>19 the effort for Iconocare to get 510(k) clearance for</p> <p>20 the Si MCS? 12:35:38</p> <p>21 A. I do not know those numbers. Clif was</p> <p>22 responsible for paying them.</p> <p>23 MR. LAZEROW: Thank you for your time.</p> <p>24 MR. MAIDA: I don't have anything further.</p> <p>25 MR. McCaULLEY: Nothing from me. 12:35:54</p> <p style="text-align: right;">Page 147</p>                                               | <p>1 JURAT</p> <p>2</p> <p>3 I, KEVIN MAY, do hereby certify under</p> <p>4 penalty of perjury that I have read the foregoing</p> <p>5 transcript of my deposition taken remotely via</p> <p>6 videoconference on Thursday, November 3, 2022; that</p> <p>7 I have made such corrections as appear noted herein</p> <p>8 in ink, initialed by me; that my testimony as</p> <p>9 contained herein, as corrected, is true and correct.</p> <p>10</p> <p>11 Dated this ____ day of _____, 2022,</p> <p>12 at _____.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 KEVIN MAY</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 149</p> |

**EXHIBIT 17**

**to**

**PAUL D. BRACHMAN DECLARATION IN SUPPORT  
OF DEFENDANT'S MOTION IN LIMINE NO. 1  
TO EXCLUDE OUT-OF-COURT HOSPITAL  
STATEMENTS**



Deposition of:  
**Highly CONF Chris Gibson**

*June 22, 2021*

In the Matter of:  
**Rebotix Repair LLC v Intuitive  
Surgical, Inc.**

**Veritext Legal Solutions**

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Page 1

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
CIVIL CASE NO. 8:20-cv-2274-T-33TGW

REBOTIX REPAIR LLC,

Plaintiff,

-vs-

INTUITIVE SURGICAL, INC.,

Defendant.

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\* \* \* \* \*

HIGHLY CONFIDENTIAL

VIDEOTAPED

DEPOSITION OF: CHRIS GIBSON

DATE TAKEN: TUESDAY, JUNE 22, 2021

TIME: 10:04 A.M. - 6:15 P.M.

PLACE: BY VIDEOCONFERENCE

REPORTED BY: CARMEN THOMAS, REGISTERED  
PROFESSIONAL REPORTER AND  
NOTARY PUBLIC

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| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 Appearing on Behalf of the Plaintiff:</p> <p>3 ALEXANDER ERWIG, ESQUIRE</p> <p>4 alexander@doel.com</p> <p>5 Dovel &amp; Luner</p> <p>6 201 Santa Monica Boulevard, Suite 600</p> <p>7 Santa Monica, California 90401</p> <p>8</p> <p>9 Appearing on Behalf of the Defendant:</p> <p>10 KAREN M. LENT, ESQUIRE</p> <p>11 karen.lent@skadden.com</p> <p>12 DOUGLAS DEBAUGH, ESQUIRE</p> <p>13 douglas.debaugh@skadden.com</p> <p>14 WILLIAM DARIO, ESQUIRE</p> <p>15 william.dario@skadden.com</p> <p>16 Skadden, Arps, Slate, Meagher &amp; Flom LLP</p> <p>17 One Manhattan West</p> <p>18 New York, New York 10001-8602</p> <p>19</p> <p>20 Appearing on Behalf of Restore Robotics,</p> <p>21 Restore Robotics Repairs and Cliff Parker</p> <p>22 Robotics, LLC:</p> <p>23 JEFFERY BERHOLD, ESQUIRE</p> <p>24 jeff@berhold.com</p> <p>25 Jeffrey L. Berhold, P.C.</p> <p>1230 Peachtree Street, Suite 1050</p> <p>Atlanta, Georgia 30309</p> <p>ALAN POKOTILOW, VIDEOGRAPHER</p> <p>CHRIS MCMILLAN, CONCIERGE</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p style="text-align: right;">Page 4</p> <p>1 Exhibit 11 E-mail dated February 4, 2019; 137</p> <p>2 Subject, RE: Premier Custom Contract</p> <p>3 - RFP, with attachment</p> <p>4 Exhibit 12 E-mail dated October 8, 2019; Subject, 149</p> <p>5 Re: EndoWrist Agreement</p> <p>6 Exhibit 13 E-mail dated August 22, 2019; Subject, 159</p> <p>7 Agreement, with attachment</p> <p>8 Exhibit 14 E-mail dated January 24, 2020; 164</p> <p>9 Subject, FW: REB Memorandum of</p> <p>10 Understanding (002), with attachment</p> <p>11 Exhibit 15 E-mail dated August 5, 2019; Subject, 168</p> <p>12 Rebotix Repair, with attachment</p> <p>13</p> <p>14 Exhibit 16 Rebotix Video 174</p> <p>15</p> <p>16 Exhibit 17 Rebotix Comprehensive Remanufacturing 181</p> <p>17 Process</p> <p>18 Exhibit 18 Estimated Annual Cost document 185</p> <p>19 Exhibit 19 E-mail dated April 17, 2018; Subject, 187</p> <p>20 Paces info, with attachment</p> <p>21</p> <p>22 Exhibit 20 E-mail dated May 2, 2018; Subject, 195</p> <p>23 EndoWrist Technical File Final Report</p> <p>24 for Customer Use, with attachment</p> <p>25</p> <p>26 Exhibit 21 E-mail dated May 31, 2018; Subject, 209</p> <p>27 Rebotix Meeting, with attachment</p> <p>28 Exhibit 22 E-mail dated May 1, 2019; Subject, Re: 213</p> <p>29 Checking in, with attachment</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>          |
| <p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 TESTIMONY OF CHRIS GIBSON</p> <p>4 Direct Examination by Ms. Lent 6</p> <p>5 Certificate of Reporter 218</p> <p>6 Certificate of Oath 219</p> <p>7 Errata Sheet 220</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 No. Description Page</p> <p>11 Exhibit 1 E-mail dated July 1, 2013; Subject, 44</p> <p>12 Killing the Robot</p> <p>13 Exhibit 2 E-mail dated February 8, 2013; 47</p> <p>14 Subject, RE: G-5 Questions</p> <p>15</p> <p>16 Exhibit 3 E-mail dated June 14, 2013; Subject, 53</p> <p>17 FW: Software description and</p> <p>18 requirement documents, with attachment</p> <p>19</p> <p>20 Exhibit 4 E-mail dated December 24, 2013; 78</p> <p>21 Subject, da Vinci certification -</p> <p>22 confidential documents enclosed, with</p> <p>23 attachment</p> <p>24 Exhibit 5 E-mail dated July 24, 2014; Subject, 83</p> <p>25 FW: Update survey, with attachment</p> <p>26</p> <p>27 Exhibit 6 E-mail dated August 1, 2017; Subject, 89</p> <p>28 EndoWrist counter resets, with</p> <p>29 attachment</p> <p>30</p> <p>31 Exhibit 7 Invoice dated 9/5/2018, to BPI Medical 95</p> <p>32</p> <p>33 Exhibit 8 Document Bates labeled REBOTIX143306 - 113</p> <p>34 143309</p> <p>35 Exhibit 9 E-mail dated June 20, 2019; Subject, 121</p> <p>RE: Rebotix Repair</p> <p>Exhibit 10 E-mail dated June 25, 2020; Subject, 125</p> <p>FW: Request for More Information on</p> <p>Rebotix Repair Repairing/Serviceing</p> <p>Activities, with attachment</p> | <p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: We're on the record. The</p> <p>2 time is now 10:04 a.m. Today is Tuesday, June 22,</p> <p>3 2021.</p> <p>4 We're here today at Rebotix Repair LLC,</p> <p>5 located in St. Petersburg, Florida, for the</p> <p>6 video-recorded deposition of Chris Gibson in the</p> <p>7 matter of Rebotix Repair LLC versus Intuitive</p> <p>8 Surgical, Incorporated, case number 8:20-cv-02274,</p> <p>9 to be heard before the United States District</p> <p>10 Court, Middle District of Florida, Tampa Division.</p> <p>11 I'm Alan Pokotilow, a legal videographer,</p> <p>12 here today on behalf of Veritext Legal Solutions.</p> <p>13 Our court reporter today is Carmen Thomas, also</p> <p>14 here today on behalf of Veritext Legal Solutions.</p> <p>15 Will counsel please state your name and</p> <p>16 affiliation for the record, after which our court</p> <p>17 reporter will swear the witness and we can proceed.</p> <p>18 MR. ERWIG: Alexander Erwig on behalf of the</p> <p>19 Plaintiff, Rebotix Repair LLC.</p> <p>20 MS. LENT: Karen Lent on behalf of Defendant,</p> <p>21 Intuitive Surgical, from Skadden Arps.</p> <p>22 MR. BERHOLD: Jeff Berhold for Restore</p> <p>23 Robotics, Restore Robotics Repairs, and Cliff</p> <p>24 Robotics -- Cliff Parker Robotics LLC.</p> <p>25 MR. DEBAUGH: Doug DeBaugh on behalf of</p> |

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| <p style="text-align: right;">Page 154</p> <p>1 entity we were operating as at that time. And I thought</p> <p>2 I had said Rebotix Repair, but it wouldn't have been</p> <p>3 Rebotix Repair. It would have been Rebotix LLC.</p> <p>4 Q Again, at -- at what time?</p> <p>5 A In that 2015 time frame. At the time of that</p> <p>6 e-mail.</p> <p>7 Q Right. Are you -- I just want to make sure</p> <p>8 again. Are you trying to tell me that, when the</p> <p>9 conversations with STERIS and Stryker occurred, that was</p> <p>10 Rebotix LLC; is that what you're -- are you trying to go</p> <p>11 back to that? I just don't want to misunderstand what</p> <p>12 you're trying to say.</p> <p>13 A Yes. Yes, that is what I mean.</p> <p>14 Q Okay. That -- because that was not -- that</p> <p>15 was separate from 8.</p> <p>16 A Oh, sorry.</p> <p>17 Q So how did you come to understand that it was</p> <p>18 Rebotix LLC and not Rebotix Repair that was having those</p> <p>19 discussions with STERIS and Stryker?</p> <p>20 A Based on that e-mail date.</p> <p>21 Q That e-mail date had nothing to do with</p> <p>22 STERIS or Stryker.</p> <p>23 A No, but it said 2015, and then it had some</p> <p>24 calculations on one of the pages.</p> <p>25 Q Yeah. I'm not sure what that page had to do</p> | <p style="text-align: right;">Page 156</p> <p>1 understanding that those conversations with STERIS and</p> <p>2 Stryker occurred in 2014 and 2015 other than Exhibit 8?</p> <p>3 A No.</p> <p>4 Q So you -- you have no idea in your mind as to</p> <p>5 when those conversations occurred, whether it was two</p> <p>6 years ago or six years ago?</p> <p>7 MR. ERWIG: Objection to form.</p> <p>8 THE WITNESS: I'm confused by that question.</p> <p>9 BY MS. LENT:</p> <p>10 Q I'm confused by -- by your answer.</p> <p>11 I -- I'm -- I'm confused as to what basis you</p> <p>12 have to say that the conversations with STERIS and</p> <p>13 Stryker occurred in 2014 and 2015.</p> <p>14 A Based on that e-mail date and the</p> <p>15 calculations that are on that same exhibit.</p> <p>16 Q Did that refresh your recollection about when</p> <p>17 they occurred?</p> <p>18 A Yes. Based on that date, Rebotix Repair was</p> <p>19 not a company at that time.</p> <p>20 Q No, I -- I understand the timing of Rebotix</p> <p>21 Repair as a company.</p> <p>22 The questions that I was asking you about</p> <p>23 when those conversations occurred were based on what</p> <p>24 your recollection was of when it happened.</p> <p>25 So whether it was -- you know, was it -- was</p> |
| <p style="text-align: right;">Page 155</p> <p>1 with the e-mail other than it was a bunch of jumbled</p> <p>2 documents produced together.</p> <p>3 Is this something you talked about with</p> <p>4 counsel during the break?</p> <p>5 MR. ERWIG: Objection to form. Instruct the</p> <p>6 witness not to reveal any sort of communications</p> <p>7 between --</p> <p>8 MS. LENT: Actually, when you talk to your</p> <p>9 client during the break, I am entitled to ask if</p> <p>10 that was a cause of a change in the answer to a</p> <p>11 question.</p> <p>12 THE WITNESS: No. That was something I</p> <p>13 reviewed on my own.</p> <p>14 BY MS. LENT:</p> <p>15 Q And so based on the two unrelated e-mails in</p> <p>16 Exhibit 8, you now believe that the conversations with</p> <p>17 STERIS and Stryker occurred in 2014 and 2015; is that</p> <p>18 your testimony?</p> <p>19 MR. ERWIG: Objection to form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. LENT:</p> <p>22 Q I'm sorry. The -- your answer was -- came at</p> <p>23 the same time as the objection, and I couldn't hear it.</p> <p>24 A Yes.</p> <p>25 Q Is there any other basis for your</p>                                                                                                                                                | <p style="text-align: right;">Page 157</p> <p>1 it two years ago or six years ago, do you have any basis</p> <p>2 other than Exhibit 8 to say whether they occurred two</p> <p>3 years ago or six years ago?</p> <p>4 A No.</p> <p>5 Q Okay. Okay. Let's go look at the exhibit</p> <p>6 that's on-screen right now, which is Exhibit C of</p> <p>7 Exhibit 11.</p> <p>8 Before we took a break, we talked about these</p> <p>9 ten distributors.</p> <p>10 And I wanted to ask you, other than Restore</p> <p>11 Robotics, were any of these distributors listed on</p> <p>12 Exhibit C companies that had the ability themselves to</p> <p>13 repair and reset the usage counter on EndoWrists?</p> <p>14 A No.</p> <p>15 Q And other than Restore Rebotix and the</p> <p>16 attempt to set up Baker Scott and White [sic], did</p> <p>17 Rebotix Repairs provide any other company with the</p> <p>18 ability to repair and reset the usage counter on</p> <p>19 EndoWrist?</p> <p>20 A No.</p> <p>21 Q Are you familiar with a company called</p> <p>22 Surgical Instrument Service, or SIS?</p> <p>23 A Yes.</p> <p>24 Q Did Rebotix Repairs use SIS as a distributor?</p> <p>25 A Yes.</p>                                                                                                      |

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| <p style="text-align: right;">Page 158</p> <p>1 Q Can you describe the business relationship<br/>         2 between Rebotix Repairs an SIS?<br/>         3 A Yes. SIS has been a longtime customer of<br/>         4 Benjamin Biomedical. And as I discussed before, that we<br/>         5 utilized our distributor base of Benjamin Biomedical to<br/>         6 offer the repair service that Rebotix Repairs was<br/>         7 offering, and so we engaged SIS to begin selling the<br/>         8 Rebotix Repair repair process and service to their<br/>         9 customers, which are the end-user hospitals.<br/>         10 Q Did Rebotix Repairs ever provide information<br/>         11 to SIS regarding the method for extending usage limits<br/>         12 on EndoWrists?<br/>         13 A I believe some information was shared, yes.<br/>         14 Q What information was shared?<br/>         15 A I don't know. That would have come from Stan<br/>         16 and Greg.<br/>         17 Q Do you know whether Rebotix informed SIS<br/>         18 about any regulatory approval sought by Rebotix for<br/>         19 extending usage limits on EndoWrists?<br/>         20 A I don't know.<br/>         21 Q Do you know whether Rebotix informed SIS that<br/>         22 Rebotix had withdrawn its application for FDA approval<br/>         23 to extend the usage life -- the usage limits on<br/>         24 EndoWrists?<br/>         25 MR. ERWIG: Objection to form.</p> | <p style="text-align: right;">Page 160</p> <p>1 A We had discussed with SIS that they wanted to<br/>         2 become their own service center. And they were going to<br/>         3 set up in Arizona a facility they were already occupying<br/>         4 and doing repairs at because they had two very large<br/>         5 customers in Arizona.<br/>         6 Q Was this agreement ever executed?<br/>         7 A No.<br/>         8 Q Why not?<br/>         9 A So I believe because of Intuitive. Their<br/>         10 customer was pressured -- they -- they were open and had<br/>         11 multiple discussions with their customer and their<br/>         12 customer's legal team, and they determined that<br/>         13 Intuitive was threatening them and said they would not<br/>         14 repair their robot. They would no longer service it if<br/>         15 they started using SIS or Rebotix Repair for the<br/>         16 servicing of their EndoWrist. And so without their<br/>         17 large customers coming on board, there was no reason for<br/>         18 them to sign the agreement.<br/>         19 Q What customer are you referring to?<br/>         20 A I knew you were going to ask me that, and I<br/>         21 don't remember. There was two of them out in Arizona.<br/>         22 If you give me a minute to -- to think about it.<br/>         23 Q Uh-huh.<br/>         24 A I -- I'm sorry. I'm drawing a blank right<br/>         25 now. I know it will come to me. But it is two very</p> |
| <p style="text-align: right;">Page 159</p> <p>1 THE WITNESS: I don't know.<br/>         2 MS. LENT: Let's introduce as the next<br/>         3 exhibit tab 45.<br/>         4 (Exhibit 13 was marked for identification.)<br/>         5 MR. MCMILLAN: Sure. Please stand by.<br/>         6 Tab 45 has been introduced as Gibson<br/>         7 Exhibit 13.<br/>         8 BY MS. LENT:<br/>         9 Q Exhibit 13 is an e-mail from Chris G to Greg<br/>         10 Posdal and David, with the subject line "Agreement,"<br/>         11 dated August 22, 2019.<br/>         12 Mr. Gibson, can you take a look at this<br/>         13 exhibit and let me know if you recognize it?<br/>         14 A Sure. Just give me a minute.<br/>         15 Okay. I've reviewed it.<br/>         16 Q What -- who's Greg Posdal?<br/>         17 A Greg, is the -- I believe the president of<br/>         18 SIS.<br/>         19 Q And who's David who's BCC'd?<br/>         20 A I assume that's probably David Mixner.<br/>         21 Q Any idea why you BCC'd him here?<br/>         22 A Probably just so he saw that there's an<br/>         23 agreement going out to SIS.<br/>         24 Q And why were you sending this draft agreement<br/>         25 to SIS?</p>                                                                                                                                                                                                                                  | <p style="text-align: right;">Page 161</p> <p>1 large customers in Arizona.<br/>         2 Q And you learned about that through<br/>         3 discussions with SIS?<br/>         4 A I'm -- I'm sorry. Say that one more time.<br/>         5 Q All of this information that you just<br/>         6 testified to about these two large customers in Arizona,<br/>         7 how did you learn that information?<br/>         8 A Actually, previously to that -- to this<br/>         9 agreement, Glenn and I had presented the repair service<br/>         10 process at one of the hospital systems, and so we knew<br/>         11 it was a large system. SIS, however, had been servicing<br/>         12 this hospital system for a long time and for many years.<br/>         13 For like 20 years. And so they actually had the<br/>         14 relationship there. And then, yes, then the<br/>         15 conversation was then relayed to us through SIS that the<br/>         16 hospital system was not going to move forward working<br/>         17 with SIS or Rebotix Repairs.<br/>         18 Q Well, was -- did -- did you have an<br/>         19 understanding that SIS was unhappy with Rebotix for<br/>         20 going after one of its customers -- longstanding<br/>         21 customers?<br/>         22 MR. ERWIG: Objection to form.<br/>         23 THE WITNESS: No.<br/>         24 BY MS. LENT:<br/>         25 Q Did SIS -- do you know whether SIS knew that</p>                                                         |



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| <p style="text-align: right;">Page 162</p> <p>1 Rebotix went and pitched one of its longstanding<br/>         2 customers?<br/>         3 MR. ERWIG: Objection to form.<br/>         4 THE WITNESS: I believe they did.<br/>         5 BY MS. LENT:<br/>         6 Q Did you discuss that with SIS?<br/>         7 A I don't know. I don't recall.<br/>         8 Q Did Rebotix Repairs require any minimum<br/>         9 payment?<br/>         10 A I'm sorry. I just remembered the names of<br/>         11 the two hospital systems.<br/>         12 Q Okay.<br/>         13 A It's HonorHealth and Banner Health.<br/>         14 Q And which is the one that Rebotix pitched to?<br/>         15 A Actually, we pitched to both of them. But I<br/>         16 think -- well, see, now I'm confused. I would say<br/>         17 probably Banner was the one that SIS had the better<br/>         18 relationship at.<br/>         19 Q In exchange for providing SIS with the<br/>         20 technology to reset the usage counter on EndoWrists, was<br/>         21 Si -- sorry -- was Rebotix Repairs requiring any minimum<br/>         22 payment from SIS?<br/>         23 A I would have to look at the agreement, but<br/>         24 typically yes, we did -- yes, I can see right here. The<br/>         25 initial quantity was they had to buy, looks like, 50</p> | <p style="text-align: right;">Page 164</p> <p>1 exhibit.<br/>         2 (Exhibit 14 was marked for identification.)<br/>         3 MR. MCMILLAN: Please stand by.<br/>         4 Tab 52 has been introduced as Gibson<br/>         5 Exhibit 14.<br/>         6 BY MS. LENT:<br/>         7 Q Exhibit 14 is an e-mail from Chris G to Glenn<br/>         8 P on January 24, 2020. The subject is "REB Memorandum<br/>         9 of Understanding."<br/>         10 Can you take a look at this document and let<br/>         11 me know if you recognize it?<br/>         12 A Sure. Just give me a second.<br/>         13 Okay. Yes.<br/>         14 Q Do you recognize this document?<br/>         15 A Yes. I've seen it before.<br/>         16 Q And what is it?<br/>         17 A It's a memorandum of understanding that<br/>         18 SIS -- I believe they wrote this and sent it to us and<br/>         19 wanted us to agree to these terms, which we never did<br/>         20 and never would.<br/>         21 Q And this was subsequent to the last exchange<br/>         22 we saw about entering into a -- a servicing agreement?<br/>         23 A I don't remember. What was the date on that<br/>         24 service agreement I sent? I'm sorry. I can go back<br/>         25 through here and look.</p>                                                                                                                                                                                                                              |
| <p style="text-align: right;">Page 163</p> <p>1 Interceptor boards from us.<br/>         2 Q And where are you looking at for that?<br/>         3 A Under "Scope of Work."<br/>         4 Q So that was for the initial setup, that this<br/>         5 draft agreement would require SIS to purchase 50<br/>         6 components; is that right?<br/>         7 A Correct. That's the way I'm reading it.<br/>         8 Q And each Interceptor component price,<br/>         9 according to section three of the agreement, would be<br/>         10 not to exceed \$800; is that right?<br/>         11 A Correct.<br/>         12 Q So the initial investment for SIS would be up<br/>         13 to \$40,000 if they executed this agreement?<br/>         14 A I believe that would be right.<br/>         15 Q Were there any other initial costs -- strike<br/>         16 that.<br/>         17 Were there any other initial amounts that<br/>         18 Rebotix Repair was requesting to be paid by SIS in order<br/>         19 to enter into a service center agreement?<br/>         20 A Not that I recall.<br/>         21 Q And, again, your understanding is that a<br/>         22 service center agreement was never executed with SIS,<br/>         23 correct?<br/>         24 A Correct.<br/>         25 MS. LENT: Let's introduce tab 52 as the next</p>      | <p style="text-align: right;">Page 165</p> <p>1 Q August 2019.<br/>         2 A Yeah. So this was after. The memorandum of<br/>         3 understanding came after we sent over our agreement, our<br/>         4 agreement. Sorry.<br/>         5 Q And why do you say that Rebotix Repairs never<br/>         6 would agree to these terms?<br/>         7 A Well, when I look at the pricing, that's not<br/>         8 something that we would ever agree to -- where they say<br/>         9 for the first 100, it's \$200, and then 350, and then<br/>         10 450, based on steps of how many they do.<br/>         11 Q So let's look at that. This is number two in<br/>         12 that memorandum of understanding. The first bullet<br/>         13 says, "For the first 100 (combination<br/>         14 Interceptors/repairs) the discount from current pricing<br/>         15 per Interceptor or repair shall be \$200."<br/>         16 Do you see that?<br/>         17 A Yes.<br/>         18 Q So does that mean it's -- they're charging<br/>         19 \$200 or it's \$200 off of some other price?<br/>         20 A The way I understand that is if they were<br/>         21 buying boards at no more than \$800, and then for the<br/>         22 first 100, they want a volume discount of \$200 off each<br/>         23 \$800 board. So they would be paying 600. And then as<br/>         24 you go forward in the next bullet point, the next 200<br/>         25 would be 350 off. And then the next 300, it would be</p> |

**EXHIBIT 18**

**to**

**PAUL D. BRACHMAN DECLARATION IN SUPPORT  
OF DEFENDANT'S MOTION IN LIMINE NO. 1  
TO EXCLUDE OUT-OF-COURT HOSPITAL  
STATEMENTS**



Deposition of:  
**AEO John "Jake" Joseph Colletti , Jr.**  
*May 7, 2021*

In the Matter of:  
**Restore Robotics LLC v Intuitive  
Surgical**

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

RESTORE ROBOTICS LLC AND  
RESTORE ROBOTICS REPAIRS  
LLC,

CIVIL ACTION FILE

Plaintiffs,

NO. 5:19-cv-55-TKW-MJF

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

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REMOTE VIDEO DEPOSITION OF
JOHN "JAKE" JOSEPH COLLETTI, JR.

May 7, 2021

1:04 p.m.

753 Longwood Drive
Lake Forest, Illinois

S. Julie Friedman, CCR-B-1476

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 JEFFREY L. BERHOLD, P.C.</p> <p>4 JEFFREY L. BERHOLD, ESQ.</p> <p>5 Suite 1050</p> <p>6 1230 Peachtree Street NE</p> <p>7 Atlanta, Georgia 30309</p> <p>8 404.872.3800</p> <p>9 678.868.2021 Fax</p> <p>10 jeff@berhold.com</p> <p>11</p> <p>12 On behalf of the Defendant:</p> <p>13</p> <p>14 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP</p> <p>15 MICHAEL W. FOLGER, ESQ.</p> <p>16 ANISA A. SOMANI, ESQ.</p> <p>17 One Manhattan West</p> <p>18 New York, New York 10001-8602</p> <p>19 212.735.2157</p> <p>20 917.777.2157 Fax</p> <p>21 michael.folger@skadden.com</p> <p>22 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP</p> <p>23 ANISA A. SOMANI, ESQ.</p> <p>24 1440 New York Avenue, N.W.</p> <p>25 Washington, D.C. 20005</p> <p>202.371.7509</p> <p>202.661.8209</p> <p>anisa.somani@skadden.com</p> <p>Also Present:</p> <p>Chris McMillan, Concierge Tech</p> <p>Alan Pokotilow, Videographer</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 Exhibit 5 Sunday, June 23, 2019 9:11 PM 46</p> <p>4 E-mail, from Colletti, to Parker,</p> <p>5 Subject: Ac promo</p> <p>6 2019_momentumsRobotics2.pptx,</p> <p>7 HIGHLY CONFIDENTIAL – ATTORNEYS'</p> <p>8 EYES ONLY 0040518--0040544</p> <p>9</p> <p>10 Exhibit 6 E-mail Chain Ending with Tuesday, 52</p> <p>11 October 15, 2019 4:10 PM E-mail,</p> <p>12 from cparker@restorerobotics.com,</p> <p>13 to Colletti, Subject: RE: Letter,</p> <p>14 HIGHLY CONFIDENTIAL – ATTORNEYS'</p> <p>15 EYES ONLY 0007161-0007162</p> <p>16</p> <p>17 Exhibit 7 E-mail Chain Ending with 56</p> <p>18 Wednesday, May 1, 2019 3:30 PM</p> <p>19 E-mail, from Greeson, to May and</p> <p>20 Parker, Subject: RE: Meeting with</p> <p>21 Medline QA, HIGHLY CONFIDENTIAL –</p> <p>22 ATTORNEYS' EYES ONLY</p> <p>23 0007881-0007884</p> <p>24</p> <p>25 Exhibit 8 E-mail Chain Ending with 59</p> <p>Thursday, May 9, 2019 11:11 AM</p> <p>E-mail, from Allegretti, to</p> <p>Greeson, et al., Subject: RE:</p> <p>Restore Robotics Meeting, HIGHLY</p> <p>CONFIDENTIAL – ATTORNEYS' EYES</p> <p>ONLY 0009643-0009644</p> <p>Exhibit 9 E-mail Chain Ending with Tuesday, 61</p> <p>June 18, 2019 12:11 PM E-mail,</p> <p>from Zeman, to Parker, Subject:</p> <p>RE: Pre-Submission, HIGHLY</p> <p>CONFIDENTIAL – ATTORNEYS' EYES</p> <p>ONLY 0041564-0041565</p> <p>Exhibit 10 Thursday, June 20, 2019 9:06 AM 64</p> <p>E-mail, from Parker, to Colletti</p> <p>and Sheehy, Subject: FAQ doc,</p> <p>HIGHLY CONFIDENTIAL – ATTORNEYS'</p> <p>EYES ONLY 0005838-0005842</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX OF EXAMINATIONS</p> <p>2 WITNESS:</p> <p>3 John "Jake" Joseph Colletti, Jr.</p> <p>4 Page</p> <p>5 CROSS-EXAMINATION 7</p> <p>6 By Mr. Berhold</p> <p>7</p> <p>8 CROSS-EXAMINATION 16</p> <p>9 By Mr. Folger</p> <p>10</p> <p>11 INDEX TO EXHIBITS</p> <p>12 Exhibit Description Page</p> <p>13</p> <p>14 Exhibit 1 E-mail Chain Ending with Friday, 13</p> <p>15 January 10, 2020 3:38 PM E-mail,</p> <p>16 from Klinefelter, to Colletti and</p> <p>17 Therrien, Subject: RE: Da Vinci</p> <p>18 Service contract Language, HIGHLY</p> <p>19 CONFIDENTIAL -- ATTORNEYS' EYES</p> <p>20 ONLY 0041672-41676</p> <p>21</p> <p>22 Exhibit 2 Wednesday, July 8, 2020 1:26 PM 15</p> <p>23 E-mail, from Colletti, to Sheehy,</p> <p>24 et al., Subject: SI Endowrist,</p> <p>25 HIGHLY CONFIDENTIAL – ATTORNEYS'</p> <p>EYES ONLY, 0040639</p> <p>Exhibit 3 Wednesday, May 15, 2019 8:22 AM 27</p> <p>E-mail, from</p> <p>cparker@restorerobotics.com, to</p> <p>Czajka and Colletti</p> <p>Exhibit 4 Friday, June 7, 2019 10:03 AM 33</p> <p>E-mail, from</p> <p>cparker@restorerobotics.com, to</p> <p>Colletti, Subject: 008_RESTORE</p> <p>ROBOTICS__INTRODUCTION •]</p> <p>Q1*]19.pptx, HIGHLY</p> <p>CONFIDENTIAL -- ATTORNEYS' EYES</p> <p>ONLY 0005717-0005728</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 Exhibit 11 E-mail Chain Ending with 73</p> <p>4 Wednesday, May 13, 2020 10:30 AM</p> <p>5 E-mail, from Parker, to Colletti</p> <p>6 and Sheehy, Subject: RE: Sales</p> <p>7 only -DaVinci, HIGHLY</p> <p>8 CONFIDENTIAL – ATTORNEYS' EYES</p> <p>9 ONLY 0005393 -0005394</p> <p>10</p> <p>11 Exhibit 12 Maintenance and Private Label 76</p> <p>12 Repair Agreement, ATTORNEYS' EYES</p> <p>13 ONLY, Restore-00018643-00018667</p> <p>14</p> <p>15 Exhibit 13 Tuesday, February 25, 2020 11:20 80</p> <p>16 AM E-mail, from Parker, to</p> <p>17 Colletti and Sheehy, Subject:</p> <p>18 Restore numbers for 2019, HIGHLY</p> <p>19 CONFIDENTIAL – ATTORNEYS' EYES</p> <p>20 ONLY 0004329-4332</p> <p>21</p> <p>22 (Original Exhibits 1 through 13 have been</p> <p>23 attached to the original transcript.)</p>

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: We're on the record. 2 The time is now 1:04 p.m. Today is Friday, 3 May 7th of 2021. 4 We're here today at the Colletti residence 5 located at 753 Longwood Drive in Lake Forest, 6 Illinois, for the media-recorded deposition of 7 John Joseph Colletti, Jr., in the matter of 8 Restore Robotics LLC, Restore Robotics Repairs 9 LLC, and Clif Parker Robotics LLC versus 10 Intuitive Surgical Incorporated; and 11 Counterclaimant Intuitive Surgical Incorporated 12 versus Restore Robotics LLC and Restore Robotics 13 Repairs LLC, Civil Case No. 5:19-cv-55-TKW-MJF, 14 to be heard before The United States District 15 Court, For The Northern District of Florida, 16 Panama City Division. 17 Our court reporter today is Julie 18 Friedman, here today on behalf of Veritext Legal 19 Solutions. I'm Alan Pokotilow, a legal 20 videographer, also here today here on behalf of 21 Veritext Legal Solutions. 22 Will counsel please state your name and 23 affiliation for the record, after which our 24 court reporter will read a brief stipulation and 25 then swear the witness, and we can proceed.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. What do you do? 2 A. My title is national sales director for 3 Medline Industries. 4 Q. And what are your responsibilities in that 5 capacity? 6 A. I oversee the sales for our reprocessing 7 division. It's a -- the sale of single-use devices 8 back in for healthcare use. 9 Q. Does your division also sell repaired 10 devices? 11 A. We do. 12 Q. Do you a sales staff? 13 A. We do. I have six -- six regional 14 directors, and then it's about 34 renewal sales 15 specialists throughout the country. 16 Q. Does your sales staff have a sales 17 approach generally? 18 A. They are dedicated -- They are dedicated 19 access to -- specifically to the division's need to 20 sell reprocessing. We work relationships through our 21 acute care sales force through Medline, which about 22 700 folks nationwide, so leveraging supply chain 23 relationships we have through our distribution arm. 24 Q. At some point, did Medline look at 25 starting a relationship with Restore Robotics?</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. BERHOLD: Jeff Berhold for Plaintiffs 2 Restore Robotics LLC, Restore Robotics Repairs 3 LLC, and Clif Parker Robotics LLC. 4 MR. FOLGER: Folger for Defendant 5 Intuitive Surgical on behalf of Skadden Arps. 6 MS. SOMANI: Anisa Somani on behalf of -- 7 behalf of -- Anisa Somani from Skadden Arps for 8 Intuitive Surgical. 9 THE COURT REPORTER: Due to the need for 10 this deposition to take place remotely because 11 of the Government's order for social distancing, 12 the parties will stipulate that the court 13 reporter may swear in the witness over the 14 Veritext virtual videoconference and that the 15 witness has verified that he is, John Joseph 16 Colletti, Jr. 17 JOHN "JAKE" JOSEPH COLLETTI, JR., having 18 been first duly sworn, was examined and 19 testified as follows: 20 CROSS-EXAMINATION 21 BY MR. BERHOLD: 22 Q. Good afternoon, Mr. Colletti. 23 A. Good afternoon. 24 Q. Are you currently employed? 25 A. I am.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Yes. 2 Q. Were you involved in that process? 3 A. Yes. I was involved in the initial 4 conversations and commitment. 5 Q. What is your recollection of what Medline 6 did in that process? 7 A. We actually went to their physical site in 8 Anaheim, California, visited what exactly the 9 mechanisms they would do in order to repair an 10 EndoWrist device. We also have relationships in 11 repair already in place with Restore prior to. 12 Q. Did Medline undertake any assessment of 13 whether a -- it believed that a 510(k) was necessary 14 for selling the repaired instruments? 15 A. For repair, you know, due to ISO 16 certification and what we were -- for what we've done 17 historically, we restore, the 510(k) was not 18 necessary. 19 Q. At some point did Medline enter a 20 distribution agreement for buying and reselling the 21 repaired EndoWrist instruments? 22 A. Yes. 23 Q. And did your sales staff pitch the restair 24 (ph.) -- repaired instruments to their -- your 25 customers?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. We did.</p> <p>2 Q. Do you recall how many customers were</p> <p>3 pitched on the repaired instruments?</p> <p>4 A. I don't have an exact number, but I would</p> <p>5 say at least a minimum of a hundred.</p> <p>6 Q. Do you recall the response generally from</p> <p>7 your customers?</p> <p>8 MR. FOLGER: Objection. Form.</p> <p>9 Q. (By Mr. Berhold) You can answer, Mr.</p> <p>10 Colletti.</p> <p>11 A. We -- We had several customers interested</p> <p>12 in the endeavor, in -- in tackling the repairs of</p> <p>13 EndoWrist.</p> <p>14 Q. Were there -- Did you observe different</p> <p>15 types of responses to the sales pitch?</p> <p>16 A. We did. Yes. Responses range from</p> <p>17 contractual obligations, contractual restrictions,</p> <p>18 interference from the -- I would say, the Intuitive</p> <p>19 sales force and -- and some clinical objection.</p> <p>20 Q. Do you recall generally how many of the or</p> <p>21 what percentage --</p> <p>22 Do you recall what percentage of the</p> <p>23 customers pitched had clinical objections?</p> <p>24 A. Clinical was actually one of the smaller.</p> <p>25 Probably only about 5 or 10 percent was the clinical</p>	<p style="text-align: right;">Page 12</p> <p>1 warranty, what it would mean to their service</p> <p>2 agreements, things of that nature.</p> <p>3 Q. And the balance -- Well, and then another</p> <p>4 20 percent had mentioned interference from Intuitive</p> <p>5 representatives?</p> <p>6 MR. FOLGER: Objection. Form.</p> <p>7 THE WITNESS: A lot of times, at certain</p> <p>8 locations -- it can vary across the country --</p> <p>9 the sales team could be involved in actually</p> <p>10 case coverage, actually helping operate the</p> <p>11 robot itself or managing inventory for the</p> <p>12 staff.</p> <p>13 When it came into play of using a repaired</p> <p>14 device or nothing that Intuitive was making,</p> <p>15 well, made -- they made originally, anything</p> <p>16 that would -- involved with a repaired device,</p> <p>17 they would not, you know, not cover that type of</p> <p>18 case.</p> <p>19 Q. (By Mr. Berhold) And would that include</p> <p>20 providing field service on the robot?</p> <p>21 MR. FOLGER: Objection to form.</p> <p>22 THE WITNESS: Correct.</p> <p>23 Q. (By Mr. Berhold) At some point, did</p> <p>24 Medline stop pitching the repaired instruments --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 objection to a repaired EndoWrist.</p> <p>2 The majority, vast majority was -- You</p> <p>3 know, I would say 65, 70 percent would be the -- the</p> <p>4 contractual piece, what any type of use of a repaired</p> <p>5 instrument would mean towards a -- a service</p> <p>6 agreement or anything already in place the customer</p> <p>7 had with Intuitive.</p> <p>8 Q. And could you describe a little more about</p> <p>9 what you mean by clinical objections.</p> <p>10 A. So what we do, what I do for -- for</p> <p>11 Medline is we sell remanufactured single-use devices,</p> <p>12 so there's a lot of what historically thought of as a</p> <p>13 secondhand device, so similar to a repair, thinking</p> <p>14 it would be a secondhand device.</p> <p>15 For the clinical folks, they're not</p> <p>16 educated on what actually we go through to -- to</p> <p>17 either repair or reprocess something.</p> <p>18 Q. And what was the percentage of customers</p> <p>19 pitched that had the clinical objections?</p> <p>20 A. Yeah. I'd say probably like that 5- to</p> <p>21 10-percent range.</p> <p>22 Q. And another 65 to 70 percent of customers</p> <p>23 pitched had concerns about contractual restrictions</p> <p>24 with Intuitive?</p> <p>25 A. Correct. What it would mean to a</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. -- to the customers?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall why?</p> <p>4 A. It was due to this lawsuit.</p> <p>5 Q. Can you explain a little further what you</p> <p>6 mean by due to the lawsuit.</p> <p>7 A. We were informed by Restore Robotics that</p> <p>8 they would no longer be able to repair any of the</p> <p>9 EndoWrists we were -- collected or worked with our</p> <p>10 customers, so we had to take a pause in the program.</p> <p>11 Q. Was it your understanding that Restore</p> <p>12 Robotics was waiting to get some sort of relief</p> <p>13 through the lawsuit?</p> <p>14 MR. FOLGER: Objection to form.</p> <p>15 THE WITNESS: In my opinion, I know</p> <p>16 Restore Robotics was looking to see if they</p> <p>17 could continue to -- the practice of -- of</p> <p>18 repairing EndoWrists.</p> <p>19 MR. BERHOLD: Concierge, can we get 41672.</p> <p>20 THE CONCIERGE TECH: Sure. Please stand</p> <p>21 by.</p> <p>22 (Exhibit 1 was marked for identification.)</p> <p>23 THE CONCIERGE TECH: 41672 has been</p> <p>24 introduced as Colletti Exhibit 1 and is now on</p> <p>25 the screen.</p>

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 14</p> <p>1 Q. (By Mr. Berhold) Mr. Colletti, can you 2 see Exhibit 1 on your screen? 3 A. I can. 4 Q. Would you like a minute to review it? The 5 concierge can -- can scroll through it, if that helps 6 your recollection. 7 THE WITNESS: Can you scroll to the 8 bottom, please. 9 THE CONCIERGE TECH: Yes. It's a 10 five-page document, just so you know. 11 THE WITNESS: Okay. 12 THE CONCIERGE TECH: Just tell me when to 13 stop, if you want. 14 THE WITNESS: Yeah. Just start from the 15 bottom, please. 16 THE CONCIERGE TECH: Okay. 17 THE WITNESS: Can you stop there real 18 quick. 19 Please proceed to move up. 20 You can keep going. 21 You can keep going. 22 You can stop there. 23 You can move up. 24 You can stop there. 25 Q. (By Mr. Berhold) So Mr. -- So,</p>	<p style="text-align: right;">Page 16</p> <p>1 A. It's been a long time, but sure. Yes. 2 Q. And was it your impression that Restore 3 Robotics was waiting for the outcome of the lawsuit 4 to turn back on the repaired instrument business? 5 MR. FOLGER: Objection to form. 6 THE WITNESS: That's correct. 7 MR. BERHOLD: Well, thank you, Mr. 8 Colletti. I don't have any further questions. 9 Mr. Folger may have some questions for 10 you. 11 MR. FOLGER: Yeah. I -- I will have some 12 questions. 13 Mr. Colletti, do you want to take maybe a 14 five-minute break while we organize some 15 thoughts, and then we'll jump in? 16 Does that work for you? 17 THE WITNESS: Sure. 18 THE VIDEOGRAPHER: The time is now 19 1:23 p.m. We're going off the record. 20 (Recess from 1:23 p.m. to 1:30 p.m.) 21 THE VIDEOGRAPHER: The time is now 22 1:30 p.m. We're back on the record. 23 Please continue. 24 CROSS-EXAMINATION 25 BY MR. FOLGER:</p>
<p style="text-align: right;">Page 15</p> <p>1 Mr. Colletti, would Exhibit 1 be an example of a 2 customer that pointed to contractual restrictions -- 3 A. Yes. 4 Q. -- regarding -- 5 MR. FOLGER: Objection. 6 Q. (By Mr. Berhold) -- repaired instruments? 7 MR. FOLGER: Objection to form. 8 THE WITNESS: Yes. It would be. 9 MR. BERHOLD: Can we turn to -- Chris, 10 can we turn to the second exhibit in the Exhibit 11 Share. 12 THE CONCIERGE TECH: Sure. 13 MR. BERHOLD: The 040639. 14 THE CONCIERGE TECH: Sure. Please stand 15 by. 16 (Exhibit 2 was marked for identification.) 17 THE CONCIERGE TECH: 40639 has been 18 introduced as Colletti Exhibit 2 and is now on 19 the screen. 20 Q. (By Mr. Berhold) Mr. Colletti, have you 21 had a chance to review Exhibit 2? 22 A. I'm reading it right now. 23 I'm finished, Jeff. 24 Q. Thank you. 25 Mr. Colletti, do you recognize Exhibit 2?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Hey, Mr. Colletti. I'm going to ask you a 2 few questions now; and, you know, the same 3 instructions as -- as Jeff just gave you. 4 Answer honestly. 5 If you don't understand my question, 6 please feel free to ask me to restate it. I'll do my 7 best to get it in a way that's understandable. 8 Does that work for you? 9 A. Sure. 10 Q. Great. 11 And, you know, I think we did a pretty 12 good job of this so far; but we'll try our best not 13 to speak over each other. So I'll try and take a 14 pause after I answer (sic) my question; and if you're 15 in the middle of answering, I'll try to make sure 16 that you get a chance to fully answer the question 17 without doing anything. 18 If I accidentally interrupt you, just let 19 me know; and I'll make sure you have the opportunity 20 to finish your -- your thought. 21 Is that okay? 22 A. Yeah. Thank you, Mike. 23 Q. Yeah. And then the other thing is, you 24 know, I think I have a little more questioning than 25 we just sort of had from the other side, so if at any</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 point you would like to take a break for any reason, 2 please just let me know. We can go off the record 3 and grab food or water or whatever. 4 I just ask that if a question is pending 5 to you, if you could answer first; and then we can 6 take a break at whatever time would work. 7 Is that okay? 8 A. Sounds good. 9 Q. Great. Okay. So when Mr. Berhold was 10 questioning you, I -- I think you said that you had 11 made or Medline had made an assessment about whether 12 Restore needed a 510(k); is that accurate? 13 A. Yes. 14 Q. And who performed that assessment? 15 Did you perform it? 16 A. Medline did not. 17 Q. Medline did not perform an assessment on 18 whether a 510(k) repair was needed? 19 A. That's correct. 20 Q. Okay. So -- So perhaps I misunderstood. 21 When there was a determination made that a 510(k) was 22 not necessary, who made that determination? 23 A. A determination was made by Restore of 24 whether or not a 510(k) was necessary for a repair 25 product.</p>	<p style="text-align: right;">Page 20</p> <p>1 other device or piece of equipment in the hospital. 2 So why would it be -- be different? 3 Q. Okay. You also, I think, stated that you 4 believe that there was interference from the 5 Intuitive sales force. Is that accurate? 6 A. That's correct. 7 Q. What specifically do you mean by 8 interference from the Intuitive sales force? 9 A. Sure. After pitching some of the programs 10 to clinical and supply chain staff, their further 11 investigation, their return response to us was -- 12 would be, well, then our rep would not cover any 13 cases using a repaired device or a situation where 14 the Intuitive rep actually physically manages either 15 inventory or actual -- the actual function of the 16 da Vinci robot during the procedure. 17 Q. I'm sorry. I don't think I quite 18 understood what you meant by manages the inventory. 19 Could you just perhaps clarify that. 20 A. Sure. Several -- Several locations will 21 have actually the Intuitive rep manage the devices 22 in -- in and out of the institution, so if more of a 23 certain version of the -- an EndoWrist is needed, 24 they would perform the ordering, the -- the intake, 25 stocking.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. And I believe that you had said 2 that Medline had attempted to sell Restore services 3 to approximately 100 customers; is that correct? 4 A. At minimum, yes. We -- We pitched the 5 program for EndoWrist repair. 6 Q. Okay. So it was pitched to about a 7 hundred customers, is that fair? 8 A. At minimum. 9 Q. And you said several were interested in 10 the services. Do you know how many? 11 A. More than 80 percent. 12 Q. Okay. And you had noted that some folks 13 expressed clinical objections is that accurate? 14 A. That's correct. 15 Q. And what were those clinical objections, 16 if you remember? 17 A. Thinking it would be a secondhand product. 18 Q. Okay. And was it your position that 19 this -- that the repair services were not secondhand 20 product? 21 A. That's correct. 22 Q. So what -- how would you -- Scratch that. 23 Well, if not a secondhand product, what 24 type of product would it be? 25 A. It -- It's just a repair service like any</p>	<p style="text-align: right;">Page 21</p> <p>1 Those devices also are used more than 2 once, so registering them if they're, you know, put 3 back into a set for a -- a future case. Managing the 4 inventory. 5 MR. FOLGER: Okay. Can I ask the 6 concierge to pull back up Exhibit 1 to the 7 deposition. 8 THE CONCIERGE TECH: Sure. Please stand 9 by. 10 Exhibit 1 is now back on the screen. 11 MR. FOLGER: Thank you. 12 Q. (By Mr. Folger) And, Mr. Colletti, you 13 remember looking at this a few minutes ago, correct? 14 A. That's correct. 15 MR. FOLGER: Can I ask to scroll, if the 16 Concierge would scroll down to the page ending 17 in 41674. 18 If you could, pause right there. 19 Q. (By Mr. Folger) Do you see there's an 20 e-mail from Eric Therrien, sent to Justin Kingfeller 21 (ph.), Christopher Sahagun, and Brian Harty on 22 December 6, 2019? 23 A. I see that here. Yes. 24 Q. And are you familiar Eric Therrien? 25 A. Yes. Eric's on -- part of our staff.</p>

Restore Robotics LLC v Intuitive Surgical

<p style="text-align: right;">Page 22</p> <p>1 Q. Okay. Does he report to you?</p> <p>2 A. Not directly. No.</p> <p>3 Q. Okay. And do you see he writes to Justin</p> <p>4 that is correct, but we don't really replace</p> <p>5 anything. Most of the repair is more of a design</p> <p>6 check to see if it's operational, check cables are</p> <p>7 not frayed, scissors are sharpened, et cetera.</p> <p>8 Anything too detrimental, we will not replace and</p> <p>9 offer a replacement at the repair price.</p> <p>10 Do you see that?</p> <p>11 A. Yes. I do.</p> <p>12 Q. And does this comport with your</p> <p>13 understanding of Restore's offerings regarding</p> <p>14 EndoWrist instruments?</p> <p>15 A. Their offering included, you know,</p> <p>16 cosmetic repair such as a sharpening of the scissor</p> <p>17 as -- as part of the repair process.</p> <p>18 Q. And if you know, is it accurate that</p> <p>19 Restore doesn't really replace anything on the</p> <p>20 EndoWrist instrument?</p> <p>21 A. I've never actually seen one under repair;</p> <p>22 but to my knowledge, yes.</p> <p>23 Q. Okay. And Mr. Therrien also writes,</p> <p>24 "Anything too detrimental, we will not replace and</p> <p>25 offer a replacement at the repair price."</p>	<p style="text-align: right;">Page 24</p> <p>1 Restore's services to potential customers, I believe.</p> <p>2 Is that accurate?</p> <p>3 A. We did. Yes. Still do.</p> <p>4 Q. And -- And you -- you still do. So</p> <p>5 you're still doing that today?</p> <p>6 A. Under Restore Robotics, no.</p> <p>7 Q. Okay.</p> <p>8 A. I thought you meant Restore. We do a lot</p> <p>9 of business with MediVision and Restore.</p> <p>10 Q. Thanks. That's a helpful clarification.</p> <p>11 I appreciate that.</p> <p>12 What -- what did -- did -- Did Medline</p> <p>13 provide any materials to prospective customers?</p> <p>14 A. We might have had a couple of pieces of</p> <p>15 collateral to explain what the program was about.</p> <p>16 Q. Okay. And would Medline from worked on</p> <p>17 drafting those materials in any way?</p> <p>18 A. We would have -- Anything with a Medline</p> <p>19 logo, we would have had gone through our division</p> <p>20 before distribution. Yes.</p> <p>21 Q. Okay. And when you say "gone through our</p> <p>22 division," what does that process entail?</p> <p>23 A. Reviewed with our internal marketing team.</p> <p>24 Q. Okay. Great. Were -- Were there any</p> <p>25 specific types of hospitals that were targeted as</p>
<p style="text-align: right;">Page 23</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And do you know what Mr. Therrien meant by</p> <p>4 that?</p> <p>5 A. I can't speak for Eric.</p> <p>6 Q. Okay. Let me -- Let me ask differently</p> <p>7 then. If a -- an EndoWrist was sent by a customer</p> <p>8 and it was damaged in some way, do you know if</p> <p>9 Restore would offer a replacement at the repair</p> <p>10 price?</p> <p>11 A. We had the ability to sell -- sell an</p> <p>12 EndoWrist that was available from -- from the market,</p> <p>13 so yes.</p> <p>14 Q. Okay. So you had -- Or apologies.</p> <p>15 Restore had an inventory of EndoWrist that</p> <p>16 it would sell. Were these -- did -- Did Restore</p> <p>17 perform any servicing on these replacement</p> <p>18 EndoWrists, if you know?</p> <p>19 A. I'm not sure, Mike, on that.</p> <p>20 Q. That's fine. Thanks.</p> <p>21 MR. FOLGER: We -- We can pull down this</p> <p>22 exhibit now.</p> <p>23 Q. (By Mr. Folger) Okay. I wanted to speak</p> <p>24 a little bit more generally.</p> <p>25 So you had said that Medline pitches</p>	<p style="text-align: right;">Page 25</p> <p>1 prospective customers?</p> <p>2 A. Only those that owned the da Vinci Si</p> <p>3 robot.</p> <p>4 Q. Okay. And was there any specific</p> <p>5 geography that Medline focused on?</p> <p>6 A. No.</p> <p>7 Q. And who would be the -- the audience for</p> <p>8 these materials at a hospital?</p> <p>9 A. Typically, supply chain or -- or head of</p> <p>10 OR would be typically the folks we were trying to</p> <p>11 communicate with.</p> <p>12 Q. Okay. Would you ever communicate with</p> <p>13 surgeons that use the da Vinci system?</p> <p>14 A. On the -- On certain situations where the</p> <p>15 conversation evolved, yes.</p> <p>16 Q. Okay. Do you remember any specific</p> <p>17 hospitals that you spoke with surgeons about?</p> <p>18 A. I don't.</p> <p>19 Q. Okay. Did you have any communications</p> <p>20 with anyone at Restore about which hospitals to</p> <p>21 target for these collateral materials?</p> <p>22 A. No. We -- We're pretty embedded into --</p> <p>23 We're pretty embedded into the healthcare system</p> <p>24 as -- as the largest med-surge distributor in the</p> <p>25 country, so we have pretty extensive relationships</p>

EXHIBIT 19

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

Message

From: Keith Johnson [krjohnson@sis-usa.com]
Sent: 9/25/2019 7:47:21 PM
To: Brooks, Timothy P. [Timothy.Brooks@bannerhealth.com]; Kirwan, Perry [Perry.Kirwan@bannerhealth.com]
Subject: Re: UMC Tucson
Attachments: da Vinci EndoWrist Repair_2019 copy.pdf; da Vinci EndoWrist Process_2019.pdf; SIS Summary of Quality Regulatory.pdf; EndoWrist FAQs.pdf

Hi Tim, I have attached the documents we have put together to support this program.

Please let me know if this helps, if we need to create any new documents, let's do it. I will need to have our corporate compliance and legal sign off on it prior to publication.

Excited to work on this project with you.

Keith

Keith Johnson | EVP, Sales and Clinical Programs
Surgical Instrument Service Co., Inc.
 Corp: 800.747.8044 | Cell: 623.687.5056
www.sis-usa.com

From: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Sent: Wednesday, September 25, 2019 4:20 PM
To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>; Keith Johnson <krjohnson@sis-usa.com>
Subject: RE: UMC Tucson

Anything you have that I can build a process to a competency to will help.

Tim Brooks, BS, CSPM,
 Director – Banner Health Systems CSPD Program
 Office - 520-694-6106
 Cell – 520-400-6790



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 Be Bold – Be Kind – Be Awesome

From: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Sent: Wednesday, September 25, 2019 4:12 PM
To: Keith Johnson <krjohnson@sis-usa.com>; Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Subject: RE: UMC Tucson

Keith – if you have some process docs that we worked on as well – please send those to Tim as well

From: Keith Johnson <krjohnson@sis-usa.com>
Sent: Wednesday, September 25, 2019 3:35 PM
To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>; Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Subject: [EXTERNAL] Re: UMC Tucson

Hi Tim, great to connect again.

I have attached the document in word format.

Please take a look and let me know your thoughts and recommended changes.

Looking forward to speaking with you soon.

Keith

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From: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Sent: Wednesday, September 25, 2019 10:42 AM
To: Keith Johnson <krjohnson@sis-usa.com>; Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Subject: FW: UMC Tucson

Morning Keith

I think you two have met before so pass on the introductory formalities

We're looking to gear up for Si program at BUMCT/S. I shared with Tim the documentation that I've been working on with you regarding process/procedure as well as supplementing your FAQs on the program as a whole. Can you reach out directly to Tim and share the docs that you have thus far? Tim has agreed to review, edit and also make additional comments if warranted to these documents. I believe this input will prove to be key to the success at Banner however I also believe it will have utility outside of the Banner system as you look to further market this program nationwide.

Tim and I also discussed putting a competency program together for this which I think is a great idea since it's been recommended in other areas that we do the same for central sterile processing. This would just fall in line with those other recommendations.

I believe that we are very close to actual kick-off which is awesome. I'm looking forward to realizing the gains that we believe that this program is going to provide to both of us.

Thanks much!

Perry

From: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Sent: Wednesday, September 25, 2019 10:35 AM
To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Subject: RE: UMC Tucson

Sounds good, look forward to speaking to him

From: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Sent: Wednesday, September 25, 2019 10:18 AM

To: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>

Subject: RE: UMC Tucson

Yes – we have been working on documentation for this. That said, I think a review and any suggested edits from your perspective would be awesome. As you alluded to – we want this to be super crisp and eliminate any variables that we can from the process.

I think you're suggestion of competency requirement is also a good one. Just strengthens the precision of what we're doing.

Ok for me to have Keith Johnson reach out to you directly and he can share where we are so far with our documentation. He will be very receptive to edits and even additional information requirements. This is just as much of a learning experience for them as it is us (on process that is – not the actual service).

Thanks Tim for the valuable input

Perry

From: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>

Sent: Wednesday, September 25, 2019 10:13 AM

To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>

Subject: RE: UMC Tucson

Perfect, sounds doable!

We should put this into a competency format that we can get education signoff from staff in both SPD and PeriOp. I am sure IP would like to see that.

Did SIS provide anything that we could formalize into a one or two page competency? I can create the competency, just need their requirements.

From: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>

Sent: Wednesday, September 25, 2019 10:01 AM

To: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>

Subject: RE: UMC Tucson

Not exactly. Once we get down to one (1) use on the instrument and that's key - because we need that last count to pull off all the identifying information that's associated with the arm -, we pull the arm out of service and send it to SIS. SIS will use that last count to read the information off and then they will load a full complement of use back on the counter associated with that instrument.

The process would be something like this. As arms come down to central processing, we would use the SIS provided reader to read the arm. If it has two more uses on it – we would process as normal and put it back into circulation. If it has one use on it – we would clean it and then put it into a receptacle (we already have these) for collection. SIS will collect the instruments in the bins and then reload the counters. If an arm say is rated for 10 uses – we would get 10 new uses once it returns from SIS. If the arm has 15 – then it would come back with 15. It is actually important that we don't receive an instrument back with less or more than the intended design otherwise we get into FDA issues because we would be re-manufacturing the device and we obviously don't want that.

Also important is that is we receive an instrument from the OR with zero uses left – it's important to collect those as well. We simply use them for parts and we get repair credit from SIS. So, we never want to toss any of them away as they are no value to use in landfill.

Does that make sense?

From: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Sent: Wednesday, September 25, 2019 9:36 AM
To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Subject: RE: UMC Tucson

Hi Perry

So the arm would have to be reset after every use?

If so we will have to discuss who is doing this. My preference would be in SPD.

Nick is on vacation this week returning Tuesday next. I spoke to him before going on PTO, he seemed to believe that it would not be a problem.

Tim

From: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Sent: Wednesday, September 25, 2019 9:09 AM
To: Brooks, Timothy P. <Timothy.Brooks@bannerhealth.com>
Subject: FW: UMC Tucson

Morning Tim

We have ordered a device from SIS that will allow us to get a 'count' on the Si Robotic arms without having to connect it to the full robot – should make workflow in central processing (or elsewhere) a little easier in terms of tracking the counters.

I'm wondering if we are at a point where we're ready to conduct our pilot at BUMCT/S.

Let me know your thoughts

Thx
Perry

From: Keith Johnson <krjohnson@sis-usa.com>
Sent: Wednesday, September 25, 2019 6:34 AM
To: Kirwan, Perry <Perry.Kirwan@bannerhealth.com>
Subject: [EXTERNAL] UMC Tucson

Are we good to schedule the install and training on the counter for next Tuesday?

Keith Johnson | Executive Vice President
Sales and Clinical Programs
Surgical Instrument Service Co., Inc.
Corp: [800.747.8044](tel:800.747.8044) | Cell: [623.687.5056](tel:623.687.5056)
www.sis-usa.com



Surgical Instrument Service Co., Inc.

da Vinci® EndoWrist® Repair FAQs

Can you send me your certification / FDA approval?

The FDA does not regulate, nor certify, repairs. The FDA regulates third party reprocessing companies and single-use devices only.

What does your service provide?

SIS's service is a complete repair of the da Vinci® EndoWrist® instruments. The instruments are sold with a use counter which limits the life of the instrument. Upon reaching a zero count the instruments are "expired" and rendered useless.

This service includes resetting the use counter via a replacement chip as well as a complete evaluation and repair of the distal/tool end of the instrument. The replacement chips, as well as the service process, were designed and developed under a formal quality system ensuring the serviced instruments meet the quality and functional requirements of a new device. Formal, independent testing and validation on the replacement chips were conducted to ensure the intended use and performance are equivalent to that of the new OEM device.

What do we need to know to collect instruments for service?

Upon receiving an instrument for the initial repair, the instrument must have at least one use left on the counter. If the original instrument reaches zero (0) it cannot be serviced. In order for the reset to be performed, the data must be retained on the initial repair. However, once the reset has been performed once, the instrument can be used up to expiration (zero) and still retain its original data and the ability to be reset.

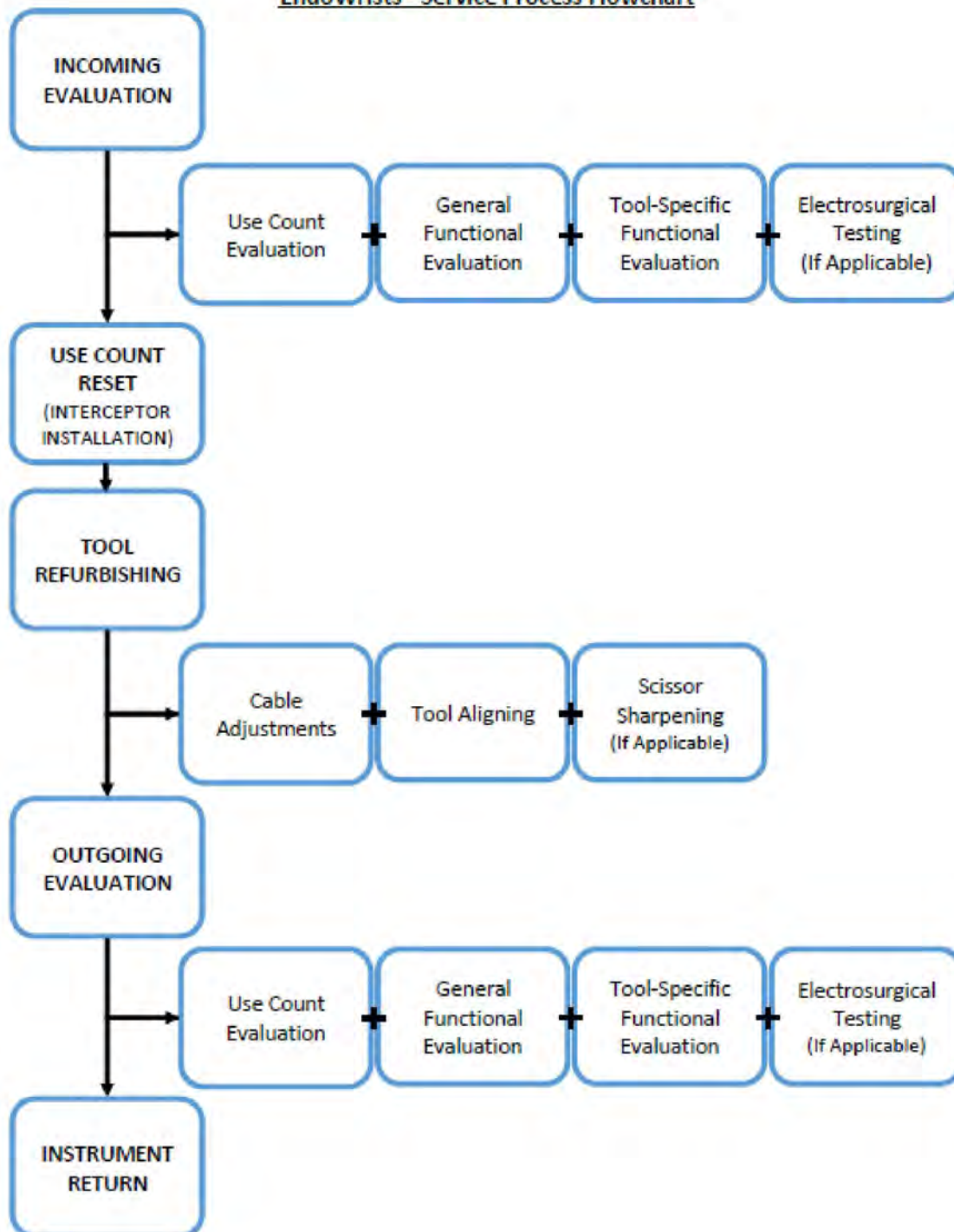
What instrument models are supported?

Compatible EndoWrist® Instruments

420001 Potts Scissors
420003 Small Clip Applier
420006 Large Needle Driver
420007 Round Tip Scissors
420033 Black Diamond Micro Forceps
420036 DeBakey Forceps
420048 Tip Forceps
420049 Cadere Forceps
420093 ProGrasp Forceps
420110 PreCise Bipolar Forceps
420121 Fine Tissue Forceps
420157 Snap-fit™ Scalpel Instrument
420171 Micro Bipolar Forceps
420172 Maryland Bipolar Forceps
420178 Curved Scissors
420179 Hot Shears (Monopolar Curved Scissors)
420181 Resano Forceps
420183 Permanent Cautery Hook
420184 Permanent Cautery Spatula
420189 Double Fenestrated Grasper
420190 Cobra Grasper
420192 Valve Hook
420194 Mega Needle Driver (Tapered)
420203 Pericardial Dissector
420204 Atrial Retractor
420205 Fenestrated Bipolar Forceps
420207 Tenaculum Forceps
420215 Cardiac Probe Grasper
420227 PK® Dissecting Forceps
420230 Large Clip Applier
420246 Atrial Retractor Short Right
420249 Dual Blade Retractor
420278 Graptor (Grasping Retractor)
420296 Large SutureCut™ Needle Driver
420309 Mega™ SutureCut™ Needle Driver
420318 Small Graptor (Grasping Retractor)
420327 Medium-Large Clip Applier
420344 Curved Bipolar Dissector

Can you describe your service process?

EndoWrists® Service Process Flowchart



Additional information:

- EndoWrist® functionality and safety are not affected by the repair
 - Extensive analysis and formal testing were performed to ensure the proper function and performance
 - Repaired instruments have been subjected to, and passed, all appropriate ISO 10993 biocompatibility tests (by a certified independent test laboratory)
 - Electrical and electrosurgical safety have been carefully considered per the expectations in the safety standards, and special fixtures are used during service to retest the instrument to a production equivalent qualification
- Service components are built to medical device quality standards, including:
 - ISO 9001: Quality Systems Model for QA in Design/Development, Production, Installation, and Servicing
 - ISO 9002: Quality Systems Model for QA in Production and Installation
 - ISO 9003: Quality Systems Model for QA in Final Inspection and test
 - ISO 9001: Quality Management Systems
- The service process is performed under a formal quality control system certified per ISO 9001, with all assembly operations and testing performed per formal procedures
- SIS provides continuing technical support to assure the final quality of the serviced instruments, and will monitor and respond to any reported field issues using a formal surveillance system
- Validated fixtures and tools can be provided to repeat safety testing in the hospital, if desired



da Vinci® EndoWrist® Repairs

Stop throwing away money on your da Vinci® EndoWrist® devices!

SIS can now service your da Vinci® devices including repair and use counter reset.

Important facts:

- The da Vinci® EndoWrist® is a “multi-use” medical device. Multi-use devices, such as endoscopic instruments, have always been eligible for repair.
- The repair of da Vinci® EndoWrist® does not alter the intended use, method of use, functionality or performance of the device in any way.
- The da Vinci® Robot interacts with the repaired EndoWrist® identically and the robot cannot be affected by the repaired device in any way.
- The robot communicates with the EndoWrist® prior to surgery only. Prior to surgery, the robot confirms the serial number, model number and remaining uses. The repaired device will function identically to the new OEM EndoWrist®.
- A repaired EndoWrist® is not an alternative or replacement device. It is an original da Vinci® manufactured device that has been repaired to original specifications.

It's time to challenge the status quo

SIS da Vinci® EndoWrist® repair services will boost your bottom line and help provide the prompt and tailored responses your OR demands.

Call your local SIS representative or our Corporate Office at 800.747.8044.



da Vinci® EndoWrist® Repair Process

When sending in your da Vinci EndoWrist® devices to SIS for repair, it is important to follow all the instructions below.

All devices must go through the decontamination process before they are collected for service by SIS. The devices do not need to be sterile.

Initial Service on an EndoWrist® (Si & S) Device

- The EndoWrist® must be sent in with one click remaining. This is only required for the initial service of the EndoWrist®. Once the device has been serviced by SIS, the counter can be run to zero.
- If an EndoWrist® is being sent for its initial service with SIS, place a red sticker on the body of the device.
- Place EndoWrist® into the SIS collection container
- Devices will be collected by your local SIS representative and shipped to the SIS National Service Center.
- Devices will be tested, refurbished to OEM performance specifications, and reset for 10 additional uses. During the refurbishment process, a code will be etched on the device.
- Once repaired, the device will be returned to your facility by your local SIS representative.

Ongoing Service of EndoWrist® (Si & S) Devices (applies only to devices that have been previously serviced by SIS)

- Device to be collected with zero clicks remaining (device is "expired")
- Place EndoWrist® into the SIS collection container
- Devices will be collected by your local SIS representative and shipped to the SIS National Service Center.
- Devices will be tested, refurbished to OEM performance specifications, and reset for 10 additional uses.
- Once repaired, the device will be returned to your facility by your local SIS representative.

EndoWrist® (Xi, Si & S) Device Collection for Parts and Testing

- All Xi devices
- Si and S devices that have zero clicks or have expired and not been serviced prior by SIS (not etched)
- Place devices in the SIS collection container
- Devices will be collected by your local SIS representative and shipped to the SIS National Service Center.



Surgical Instrument Service Co., Inc.

Summary of Quality and Reliability Measures

BACKGROUND

SIS da Vinci® repair is a specialized process for the EndoDevice® instruments of the da Vinci® surgical robot to extend their safe and effective life beyond the uses recommended by the original equipment manufacturer. SIS services the devices by installing a resettable use counter while maintaining the ability of the da Vinci™ Surgical Robot to access all data in the OEM memory and to count uses as usual.

These devices are not single use devices. The materials in the instruments are durable and commonly used in other reusable medical devices. Testing of the instruments after many additional usage cycles indicated no trend of material deterioration beyond normal tool wear.

The intended use, method of use, functionality, or performance of the instrument are not changed by this service. The original data required by the machine to communicate with the instrument is not altered in any way. The machine will still recognize the model number, serial number, and instrument being used. Additionally, the data read from the instrument is clearly displayed and verified by the user and robot prior to surgery. Data is not read during surgery.

QUALITY SYSTEM INFORMATION

The quality management system has been approved by the notified body DQS Medizinprodukte GmbH according to ISO 13485:2003 and MDD 93/42/EEC MOD 5 compliant system.

The quality management system has been approved and is currently certified by the notified body Global Group according to ISO 9001:2015.

SERVICE PROCESS DEVELOPMENT

The da Vinci® S/Si instruments are sold with an arbitrary use counter, which limits usage to a certain number of procedures. Upon reaching zero, the instruments are considered “expired” and must be discarded. Our service provides the ability to extend the useful life of the instrument. The service process involves a complete evaluation, repair, and test of the instrument.

The SIS EndoWrist® service was designed for the da Vinci® S/Si Device Instruments, the OEM chip, and robot interface to perform in the same manner as the OEM original. This service does not affect the instruments form, fit or function.

The applicable products are outlined on the following pages (this list may be updated as new products are approved for repair):

REF	USES	DESCRIPTION
420001	10	Potts Scissors
420003	100	Small Clip Applier
420006	10	Large Needle Driver
420007	10	Round Tip Scissors
420033	15	Black Diamond Micro Forceps
420036	10	DeBakey Forceps
420048	10	Long Tip Forceps
420049	10	Cadiere Forceps
420093	10	ProGrasp Forceps
420110	10	PreCise Bipolar Forceps
420121	15	Fine Tissue Forceps
420157	30	Snap-fit™ Scalpel Instrument

420171	10	Micro Bipolar Forceps
420172	10	Maryland Bipolar Forceps
420178	10	Curved Scissors
420179	10	Hot Shears (Monopolar Curved Scissors)
420181	10	Resano Forceps
420183	10	Permanent Cautery Hook
420184	10	Permanent Cautery Spatula
420189	10	Double Fenestrated Grasper
420190	10	Cobra Grasper
420192	15	Valve Hook
420194	10	Mega Needle Driver (Tapered)
420203	10	Pericardial Dissector
420204	10	Atrial Retractor

420205	10	Fenestrated Bipolar Forceps
420207	10	Tenaculum Forceps
420215	10	Cardiac Probe Grasper
420227	10	PK® Dissecting Forceps
420230	100	Large Clip Applier
420246	10	Atrial Retractor Short Right
420249	10	Dual Blade Retractor
420278	10	Graptor (Grasping Retractor)
420296	10	Large SutureCut™ Needle Driver
420309	10	Mega™ SutureCut™ Needle Driver
420318	10	Small Graptor (Grasping Retractor)
420327	100	Medium-Large Clip Applier
420344	10	Curved Bipolar Dissector

Risk Management

Risk management activities per ISO 14971 standard were performed during the development, verification and validation of service processes. Post-production monitoring of the devices serviced by SIS will ensure this service remains free from safety concerns. The risk management process identifies, estimates, and evaluates the serviced product's safety risks, methods to control these risks, and to verify the effectiveness of these controls. A detailed FMEA (Failure Modes and Effects Analysis) was performed covering the service process.

Development Process

Extensive validation and safety testing occurred during the development of the service process (see below). Both the development of the service process and the ongoing repair operations are performed under the appropriate certified quality systems. A complete technical file describing qualification activities and independent testing was created and informed the development of formal procedures to guide the service operations performed.

The following list of standards was considered and applied to the development process:

Standard #	Year	Title
EN 980	2008	Symbols for use in the labeling of medical devices
EN 1041	2008	Information supplied by the manufacturer of medical devices
EN ISO 10993-1	2009	Biological evaluation of medical devices – Part 1: Evaluation and testing within a risk management process
EN ISO 10993-4	2009	Biological evaluation of medical devices – Part 4: Selection of tests for interactions with blood
EN ISO 10993-5	2009	Biological evaluation of medical devices – Part 5: Tests for in vitro cytotoxicity
EN ISO 10993-10	2010	Biological evaluation of medical devices – Part 10: Tests for Irritation and Skin Sensitization
EN ISO 10993-11	2009	Biological evaluation of medical devices – Part 11: Tests for systemic toxicity

EN ISO 10993-12	2012	Biological evaluation of medical devices – Part 12: Sample preparation and reference materials
EN ISO 13485	2012 & AC: 2012	Medical devices – Quality management systems – Requirements for regulatory purposes
EN ISO 14971	2012	Application of risk management to medical devices
EN ISO 14937	2009	Sterilization of health care products – General requirements for characterization of a sterilizing agent and the development, validation and routine control of a sterilization process for medical devices
EN ISO 17664	2004	Sterilization of medical devices – Information to be provided by the manufacturer for the processing of re-sterilizable medical devices
EN ISO 17665-1	2006	Sterilization of health care products – Moist Heat – Part 1: Requirements for the development, validation and routine control of a sterilizer for medical devices (reference only)
EN ISO 17665-2	2009	Sterilization of health care products – Moist Heat – Part 2: Guidance on the application of ISO 17665-1 (reference only)
EN 60601-1	2006	Medical electrical equipment – Part 1: General requirements for basic safety and essential performance
EN 60601-1-2	2007	Medical electrical equipment – Part 1-2: General requirements for basic safety and essential performance – Collateral standard: Electromagnetic compatibility – Requirements and tests
EN 60601-2-2	2009	Medical electrical equipment – Part 2-2: Particular requirements for the basic safety and essential performance of high frequency surgical equipment and high frequency surgical accessories
EN 62304	2006	Medical device software – Software life-cycle processes
EN 62366	2008	Medical devices – Application of usability engineering to medical devices

BIOLOGICAL EVALUATION

The material and microbiological characteristics of devices that have been serviced have been evaluated to determine whether they demonstrate any biocompatibility risk. It has been assumed that the OEM devices were marketed as biocompatible.

Tests were conducted with devices serviced to demonstrate compliance to the following standards:

Test	Standard	Report #
ISO MEM Elution Assay with L-929 Mouse Fibroblast Cells	<ul style="list-style-type: none"> ISO 10993-5: 2009 Biological Evaluation of Medical Devices, Part 5: Tests for In Vitro Cytotoxicity ISO 10993-12: 2012 Biological Evaluation of Medical Devices, Part 12: Sample Preparation and Reference Materials 	5107 and 5109
ASTM Hemolysis – Extract Method (GLP)	<ul style="list-style-type: none"> ASTM Guideline F619-03, reapproved 2008. Standard Practice for Extraction of Medical Plastics. 2012. Annual Book of ASTM Standards, Volume 13.01:223-226 ISO 10993-4: 2002 and Amendment 1, 2006. Biological Evaluation of Medical Devices, Part 4: Selection of Tests for Interaction with Blood ISO 10993-12: 2012 Biological Evaluation of Medical Devices, Part 12: Sample Preparation and Reference Materials 	4349 and 4350
ISO Guinea Pig Maximization Sensitization Test (GLP-2 Extracts)	<ul style="list-style-type: none"> ISO 10993-10: 2010 Biological Evaluation of Medical Devices, Part 10: Tests for Irritation and Skin Sensitization, pp. 18-26 ISO 10993-12: 2012 Biological Evaluation of Medical Devices, Part 12: Sample Preparation and Reference Materials 	5003 and 4981
ISO Acute Systemic Injection Test (GLP-2 Extracts)	<ul style="list-style-type: none"> ISO 10993-11: 2006 Biological Evaluation of Medical Devices, Part 11: Tests for Systemic Toxicity ISO 10993-12: 2012 Biological Evaluation of Medical Devices, Part 12: Sample Preparation and Reference Materials 	4498 and 4501

ISO Intracutaneous Irritation Test (GLP-2 Extracts)	<ul style="list-style-type: none"> ISO 10993-10: 2010 Standard, Biological Evaluation of Medical Devices, Part 10: Tests for Irritation and Skin Sensitization, pp. 11-14 	4316 and 4317
	<ul style="list-style-type: none"> ISO 10993-12: 2012 Biological Evaluation of Medical Devices, Part 12: Sample Preparation and Reference Materials 	

The test results revealed no unacceptable levels of toxicity or irritation. All test samples demonstrated the necessary biocompatibility characteristics.

Cleaning and sterilization

The serviced devices are not provided in a sterile condition. However, they do require cleaning and sterilization prior to clinical use per the OEM IFU. There are no changes to these processes, which are performed between surgeries at the hospital. In order to ensure that sterilization instructions remain valid for the devices serviced, they have completed both cleaning and sterilization qualification studies. These studies were performed by a third party specializing in the cleaning and sterilization processes. The final results demonstrate that the recommended procedures ensure adequate cleaning and sterilization for end users of the devices.

ELECTRICAL AND ELECTROSURGICAL SAFETY

Electrical/Electrosurgical safety testing has been conducted using a third party independent test lab to verify serviced devices meet applicable environmental, safety and labeling requirements.

Tests were performed using devices serviced to demonstrate compliance to the standards listed on the following page:

Standard Document	Description
IEC 60601-1: 2005 & A1: 2012	Medical Electrical Equipment – Part 1: General requirements for basic safety and essential performance
IEC 60601-2-2: 2009	Medical Electrical Equipment – Part 2-2: Particular requirements for the basic safety and essential performance of high frequency surgical equipment and high frequency surgical accessories
EN 60601-1-2: 2007	Medical Electrical Equipment: General requirements for basic safety and essential performance. Collateral standard. Electromagnetic compatibility. Requirements and tests.

The results demonstrate compliance with the applicable requirements of the aforementioned safety standards for medical devices.

USABILITY ENGINEERING

The services have been designed to maintain the exterior specification, connection, use application, user profile, or frequently used functions, when compared to the original devices produced by the OEM. We have considered the impact of the safety and labeling requirements for the end users. One additional challenge to the labeling integrity was conducted during the electrical safety testing by SGS. Those results demonstrated legibility following an intentional rub down test.

RELIABILITY/PERFORMANCE TEST SUMMARY

A worst-case analysis was carried out to determine which models should be used during performance and life testing. Although each tool is unique, there are four basic mechanical function/tool end designs: Scissors, Graspers, Needle Drivers and Non-Opening (tool ends that do not open and close).

In addition, certain models deliver RF energy (“Energized Device”). Energized Devices are either Monopolar, Bipolar or PlasmaKinetic™ (PK™). For each Tool End Design, an Energized Device is considered worst case because RF energy represents a greater stress/challenge to the tool end. Representative models

were chosen based on Tool End Design, Energized Device models and general market popularity.

Initially, a quantity of each representative model was characterized by their mechanical and functional properties. New OEM instruments were analyzed to provide baseline statistics and information. Examples of such statistics include, but were not limited to:

- Tool end range of motion
- Tool end functional performance (e.g. grasping performance and cutting performance)
- RF energy effectiveness
- Electrical safety testing
- General instrument condition
- Effective communication and use counting on the host system

Following the OEM characterization, instruments with one remaining use underwent the repair process. Immediately following the repair process, the instruments were subjected to the same baseline testing in order to establish equivalence. Formal life-testing was then conducted to simulate an additional 10 uses. The life testing subjected the instrument to 10 simulated surgical environments to test each aspect of the individual instrument's functional capabilities. After each of the simulated uses, the instruments were subjected to the normal cleaning and sterilization procedures provided by the OEM. At different intervals, and at end-of-life, the instrument was subjected to the same battery of testing. The testing showed no degradation in performance or condition of the instruments. The formal protocols executed reside in the technical file per the ISO 13485 quality system used for development; these files were independently reviewed by DQS, a certified EU notified body assessor for medical devices.

Additionally, this repair process was repeated and a battery of tests was performed on the same batch of instruments. This brought the total number of uses experienced by the instruments to 29. This includes the 9 original uses on the OEM device, 10 additional uses following first repair service, and another 10 uses following the second repair process. The reliability testing following two repair services showed no trend of degradation in the performance or condition

of the instruments, therefore no further cycles under this formal protocol were conducted.

The test results revealed that all acceptance criteria have been achieved and the sample devices demonstrate sufficient performance and safety characteristics in order to confidently release the devices to distribution. Also, a worst-case verification test has been performed on the flush tube, a component of all devices, to ensure it has been adequately challenged in an effort to confirm the environmental conditions of use do not adversely affect the component and related performance expectations.

During further analysis for reliability, disassembled OEM instruments and their components underwent material analysis by experts in medical device design and construction. The instruments' materials were surgical grade metals or well-established thermoplastics already being utilized in other multiple-use surgical instruments.

Following the formal testing described above, a smaller batch of representative models were subjected to over 50 cleaning and sterilization cycles to demonstrate the robust nature of the instrument's design. Similar inspection and testing was carried out on these devices, and, as expected, no indications of material degradation were observed.

FUNCTIONAL VERIFICATION AND VALIDATION

Approach

Several compatibility and functional validations were conducted of the replacement chip for use with the da Vinci® S and da Vinci® Si Surgical Systems. Such validations included utilizing OEM instruments to characterize the timing and types of communications between the instrument and the host system. These same instruments were then repaired, and the replacement chip installed. The repaired instruments were then subjected to the same characterization on the same host systems to validate their equivalence. These validations showed equivalence in all instrument models and on both the S and Si Surgical Systems.

Functional testing included extensive formal protocols following regulatory expectations for medical device software testing (there is no software inside the instrument, but it interfaces to the software inside the robot itself via a simple data bus). Reputable third-party experts were utilized to ensure rigorous and independent validation.

EXHIBIT 20

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

From: Lindsey Otradovec [Lindsey.Otradovec@intusurg.com]
Sent: 2/13/2019 10:44:57 AM
To: Chace Rawls [Chace.Rawls@intusurg.com]; Ron Bair [Ron.Bair@intusurg.com]
CC: Shelton Sykes [Shelton.Sykes@intusurg.com]
Subject: FW: Si service and Instrument reprocessing
Attachments: K182140.Letter.SE.FINAL_Sent001.pdf; K182140.IFU.FINAL_Sent001.pdf

This tells me.. that they are being coached by restore robotics or whoever the company is – to say... “give me the proof you can’t use the instruments more than x lives”.
 This is why regulatory needs to be in the room to talk through why there are a specific number of lives based on testing, patient safety, etc...

Thanks. LO

From: Mario Lowe <Mario.Lowe@intusurg.com>
Sent: Wednesday, February 13, 2019 10:31 AM
To: Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Mark Johnson <Mark.Johnson@intusurg.com>
Cc: Chace Rawls <Chace.Rawls@intusurg.com>; Katie Scoville <Katie.Scoville@intusurg.com>
Subject: RE: Si service and Instrument reprocessing

Hi Lindsey:

We can certainly provide the latest FDA 510(k) Clearance letters. But this will not provide the information requested in Item 1 below. See attached for an example of an Xi Clearance letter.

The request in item 1 - required limitation of the number of uses per Endo-Wrist Instrument

Can you provide more clarification on what the hospital is looking for?

Just so you know, FDA does not require nor limit the number of uses for our EW instruments. During the 510(k) submission process, we provide data to FDA that supports the stated number of lives for a particular instrument that we state in our labeling.

Mario

Mario Lowe
 Sr. Director, Regulatory Affairs

Mobile: (408) 410-1480
 Direct: (408) 523-2314
 Fax: (408) 523-8907
Mario.Lowe@intusurg.com

 INTUITIVE

1020 Kifer Rd
 Sunnyvale, CA 94086-5304 USA
Intuitive.com

From: Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>
Sent: Wednesday, February 13, 2019 7:26 AM

To: Mark Johnson <Mark.Johnson@intusurg.com>; Mario Lowe <Mario.Lowe@intusurg.com>
Cc: Chace Rawls <Chace.Rawls@intusurg.com>; Katie Scoville <Katie.Scoville@intusurg.com>
Subject: FW: Si service and Instrument reprocessing

Mark and Mario,

Can you provide me with any of the documentation for #1 below. The Baylor Health system is being very difficult as of late and we are trying to secure a live meeting to discuss things further. I assume you have a pdf file of the Xi and Si certification letters that we can send to them? Need your guidance here.
Any help you can provide would be helpful.

Thank you. Lindsey

From: Johnson, Tony <TONY.JOHNSON@BSWHEALTH.ORG>
Sent: Tuesday, February 12, 2019 2:03 PM
To: Chace Rawls <Chace.Rawls@intusurg.com>; Watson, Janet L <JANET.WATSON@BSWHEALTH.ORG>; Koreneff, Alan <ALAN.KORENEFF@BSWHEALTH.ORG>
Cc: John Wagner <John.Wagner@intusurg.com>; Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Shelton Sykes <Shelton.Sykes@intusurg.com>
Subject: [EXTERNAL] RE: Si service and Instrument reprocessing

Chase,

We look forward to meeting again, however, we feel the meeting will not be productive until we receive the information we have repeatedly requested from Intuitive. Please provide the information below that we have been requesting and we will be happy to meet:

Information requested by BSWH:

1. Provide documentation of the latest FDA certifications for Xi and Si robots and proving the FDA granted the 510K based on a required limitation of the number of uses per Endo-Wrist Instrument.
2. Provide documentation proving an FDA requirement to perform a preventative maintenance service to remove the PM recommended notification light.
3. Provide documented scope of what is included in a preventative maintenance service and what is specifically excluded. BSWH does not find any transparency in past and current contracts for Service that define what is included vs excluded.
4. Request for "Distributor Toolkit". Informed by Jason Cooley, Field Service Senior Manager, that it is "Unavailable", although we understand it is available in Europe.
5. Need actual documents noted as "Documentation" in the Master Agreement terms and conditions to be included with the Master Agreement.
6. Provide data pertaining to BSWH cases including surgeon specific data, length of surgery, instruments used and other technical factors to allow BSWH to assess outcomes, efficiencies, etc.
7. Records of maintenance performed to date on all Si and Xi systems. Records should include specific description of preventative maintenance, corrective maintenance and/or any other maintenance performed on each unit including dates of service.

Requests pertaining to Information Services Agreement:

8. Provide documentation showing an express requirement by the FDA that the Si and Xi robots must be re-certified with a security, vulnerability or other software patch before the patch is made available to Intuitive's customers or applied in a production setting
9. A copy of Intuitive's latest independent audit report – (i.e., with regarding to information security on controls within Vendor's organization concerning the privacy, confidentiality, security, processing integrity, and availability of the Products and Services made pursuant to standards established by an authorized or recognized standards setting organization (e.g., International Auditing and Assurance Standards Board; Statement on Standards for Attestation Engagements (SSAE) SOC 1 report; SSAE SOC 2 report; ISO/IEC 27000 series) and prepared by a reputable independent auditing firm)
10. A detailed description and screen capture showing the complete English-language translation of the binary data feed from the robots to Intuitive

Thanks in advance for your prompt response.

Tony W. Johnson

Senior Vice President and Chief Supply Chain Officer
Baylor Scott & White Health

Office: (214) 820-8336
Cell: (336) 409-6756

From: Chace Rawls [<mailto:Chace.Rawls@intusurg.com>]
Sent: Tuesday, February 12, 2019 11:31 AM
To: Johnson, Tony <TONY.JOHNSON@BSWHEALTH.ORG>; Watson, Janet L <JANET.WATSON@BSWHEALTH.ORG>; Koreneff, Alan <ALAN.KORENEFF@BSWHEALTH.ORG>
Cc: John Wagner <John.Wagner@intusurg.com>; Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Shelton Sykes <Shelton.Sykes@intusurg.com>
Subject: {EXTERNAL} Re: Si service and Instrument reprocessing

All,

I just wanted to follow up and see if there is a time we could meet next week with our Service leadership as requested below. We continue to have a lot of issues being bubbled up to our Field Service team, and I just want to ensure we are all aligned appropriately. Let me know if there is a date/time that works for you all.

Thanks so much!

Chace Rawls
Director, Academic Key Accounts
South Central United States
Intuitive Surgical, Inc
Cell: 469-223-8350
E-mail: Chace.Rawls@intusurg.com

On Feb 6, 2019, at 4:33 PM, Chace Rawls <Chace.Rawls@intusurg.com> wrote:

All,

I hope this e-mail finds you all doing well.

During our meeting on Jan 15th, where we discussed the service contracts, we agreed to have some follow up discussions around our role in servicing your Si's. Since that time, it has also been brought to our attention that there have been some decisions made around reprocessing the instruments and replacing the chips that limit instrument lives.

While we understand that there is a need to control cost as much as possible, there are also some risks that should be considered. This topic has also come up as we negotiate the Master Agreement as there is language in that agreement specific to instrument usage. Given the critical nature and potential risk implications in these scenarios, I wanted to see if we could schedule a meeting to bring our VP of Field Service to Baylor and talk through all of these issues together. At the end of the day, our goal is to ensure that all considerations are being factored into the decision and that BSWH isn't exposed to unforeseen risks.

John Wagner is our VP of Field Service, based out of California. He is available to come to Dallas between Feb 19-21. Let me know if there is a time on any of those days that you all would be available to meet, and I will coordinate on our end

Thanks so much!

Chace Rawls
 Director, Academic Key Accounts
 South Central United States
Intuitive Surgical, Inc
 Cell: 469-223-8350
 E-mail: Chace.Rawls@intusurg.com

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EXHIBIT 21

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

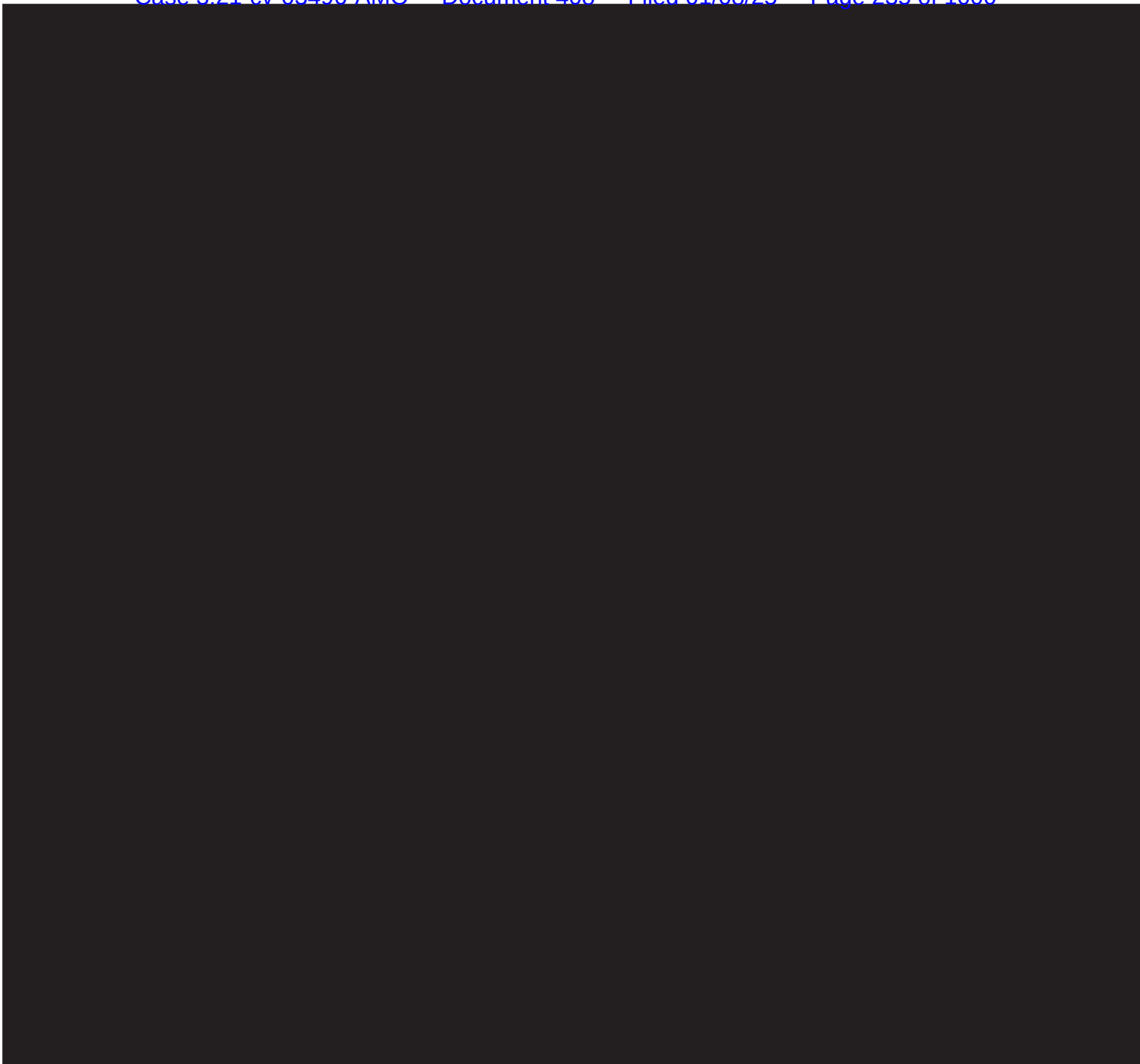


EXHIBIT 22

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

From: Ralph Wadensweiler [Ralph.Wadensweiler@intusurg.com]
Sent: 11/30/2018 3:12:14 PM
To: Grant Duque [Grant.Duque@intusurg.com]
Subject: FW: ISI Competition Slides

fyi

From: Maximillian Reese
Sent: Friday, November 30, 2018 12:14 PM
To: Ralph Wadensweiler; Anne Narimatsu; Ed Yeh; Lewis Isbell; Chrissy Shuh
Subject: RE: ISI Competition Slides

Hi Ralph,

Very interesting, thanks for sharing the competition summary!

You can get a bit of insight on what Verb is doing by quickly going through their job listings. Here are some things that come up frequently:

- "Build models which can describe scenes, actions and decisions critical to the surgical procedure."
- "There comes a time in a commercial endeavor when you have to draw a line in order to get "Gen 1" to the market."
- "Work closely with Hardware Engineering and external partners to provide feedback on the design by evaluating the robotic instruments."
- "5+ years of proven record of SW development in one of the following areas: Robotics, Controls and Motion Planning, VR/AR, Physics Simulations, SLAM, Mapping and Localization or Sensor Fusion."
- "Blending robotics, imaging systems, user interface / user experience requires a talented team of engineers with strong system integration experience."

From these it's pretty apparent they're doing something with VR/AR display system that has some kind of integrated machine learning to provide real-time data/advice to a surgeon. Also motion planning, SLAM, localization, mapping, and sensor fusion are all topics that are typically associated with autonomous robotics systems (like autonomous cars) so that would imply that they are developing non-teleoperated use modes. The mention of a "Gen 1" product implies that they have moved out of R&D and into a NPD/NPI phase for releasing a system. And finally the last bullet sounds like an overall description of their product which includes a lot of focus on user interface and experience so I wouldn't put it past them to release a phone app or something gimmicky as well.

Oh and just looking at who they're hiring, it's basically all software and controls people so I'm guessing Ethicon is the complete owner for all instrument hardware development. The last quote is pulled from Ethicon's job listings:

- "Contribute to architecting and implementing Ethicon's vision for smart/connected operating rooms, including digital/robotic surgery, advanced surgical instruments employing smart/adaptive algorithms to improve patient outcomes, and a connected IoT infrastructure for data analytics and machine learning."

-Max

From: Ralph Wadensweiler
Sent: Friday, November 30, 2018 11:14 AM
To: Anne Narimatsu; Ed Yeh; Lewis Isbell; Maximillian Reese; Chrissy Shuh
Subject: ISI Competition Slides

Team,

If you have 18 minutes to spare, this presentation from Riccardo Autorino (Urologist) is very interesting. Grant provided a link in his weekly meeting a few weeks back but here is the link again:

<https://grandroundsinurology.com/robotic-surgical-systems-in-urology/>

In the slide presentation video, he discusses robotic surgical systems for Urological procedures. The section on the competition is interesting:

- Surgeons don't like the ISI monopoly
- Interesting MCS tip cover on a competitor MCS (may be similar to something Ed is considering)
- Amazingly similar systems and even instruments (a bipolar instrument looked like our older Ultem covered bipolar instruments)
- I didn't see anything too threatening yet but he didn't have information on Verb's system.

-Ralph

EXHIBIT 23

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

From: Matt Heick [Matt.Heick@intusurg.com]
Sent: 9/14/2019 9:14:22 AM
To: AJ Inacay [aj.inacay@intusurg.com]
CC: Woody Groves [Woody.Groves@intusurg.com]; Jennifer Scott [Jennifer.scott@intusurg.com]
Subject: FW: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

AJ,

Can you provide my team with assistance on dealing with SIS. They are attempting to reprocess instruments at UF Shands.

Thank you,

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive
Peachtree Corners, GA 30092

INTUITIVE

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 6:09 PM
To: Matt Heick <Matt.Heick@intusurg.com>
Subject: Re: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Thanks Matt. Who do I need to talk to? I'm on vacation next week.

Sent from my iPhone
Woody Groves

On Sep 13, 2019, at 5:46 PM, Matt Heick <Matt.Heick@intusurg.com> wrote:

Woody,

Thanks for brining to my attention. We have a formal internal process for these situations. Let me know if you have further issues after connecting with our internal folks or if you see this surface in other accounts.

This would void their current warranty and creates patient safety issues. Happy to discuss next week upon my return from vacation...

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive

Peachtree Corners, GA 30092

<image003.jpg>

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 8:04 AM
To: Anna Samples <Anna.Samples@intusurg.com>; Jennifer Scott <Jennifer.scott@intusurg.com>; Matt Heick <Matt.Heick@intusurg.com>
Subject: Fwd: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

FYI. I'm researching our answer and response now.

Sent from my iPhone
Woody Groves

Begin forwarded message:

From: "Watkins, Dawn E." <WATKID@shands.ufl.edu>
Date: September 12, 2019 at 6:25:19 PM EDT
To: Woody Groves <Woody.Groves@intusurg.com>
Cc: "Wigglesworth, Susan J." <wiggjsj@shands.ufl.edu>
Subject: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Hi Woody,

Who needs a sales force when you're on a GPO contract? ☺

Can you help us confirm if the use of a refurbished EndoWrist would have a negative impact on our warranty?

A quick response would be great. At this rate, we'll be asked again by Monday.

Best regards,
Dawn

Dawn Watkins, MBA, CMRP
Director of Strategic Sourcing
UF Health Shands
watkid@shands.ufl.edu
Cell: 352-246-2500

From: Cassidy,Manuela <manuela.cassidy@vizientinc.com>
Sent: Thursday, September 12, 2019 4:37 PM
To: Carroll-Mazeli, Andy <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggjsj@shands.ufl.edu>
Cc: Alltop, Shirley <alltos@shands.ufl.edu>; Watkins, Dawn E. <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>
Subject: RE: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

CAUTION! This email came from outside UF or UF Health. Exercise extra caution clicking links and opening attachments from any and all senders.

Hi Andy and Susan,

Julie Birdsong, Implementation Services, Senior Director would like to know if you have any interest in setting-up a call with SIS to learn more about his category? She is looking at setting-up a time for next week. Can you please provide me your feedback?

Many thanks,
Manuela

From: Cassidy,Manuela

Sent: Monday, September 9, 2019 3:47 PM

To: 'Carroll-Mazeli, Andy' <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggsj@shands.ufl.edu>

Cc: 'Alltop, Shirley' <alltos@shands.ufl.edu>; 'Watkins, Dawn E.' <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>

Subject: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Andy and Susan,

Two of our members, Kaiser Permanente and Legacy Health System are capturing savings by using Intuitive Surgical Endowrist refurbishment products. Surgical Instrument Service Company (SIS) is now the only supplier providing refurbishment to Intuitive Surgical's da Vinci EndoWrist. SIS offers a refurbished da Vinci EndoWrist at approximately 40% savings.

Since Intuitive Surgical is an off contract vendor, there's incremental GPO volume associated with moving that spend to SIS for refurbishment in addition to over 40% on line item savings.

Please see attached initial proposed savings. Please let me know if I can schedule an onsite presentation to learn more about this category and clarify additional questions.

Thanks,

Manuela Cassidy, MBA
Enterprise Client Manager
M (904) 608-7831
manuela.cassidy@vizientinc.com

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EXHIBIT 24

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
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STATEMENTS**

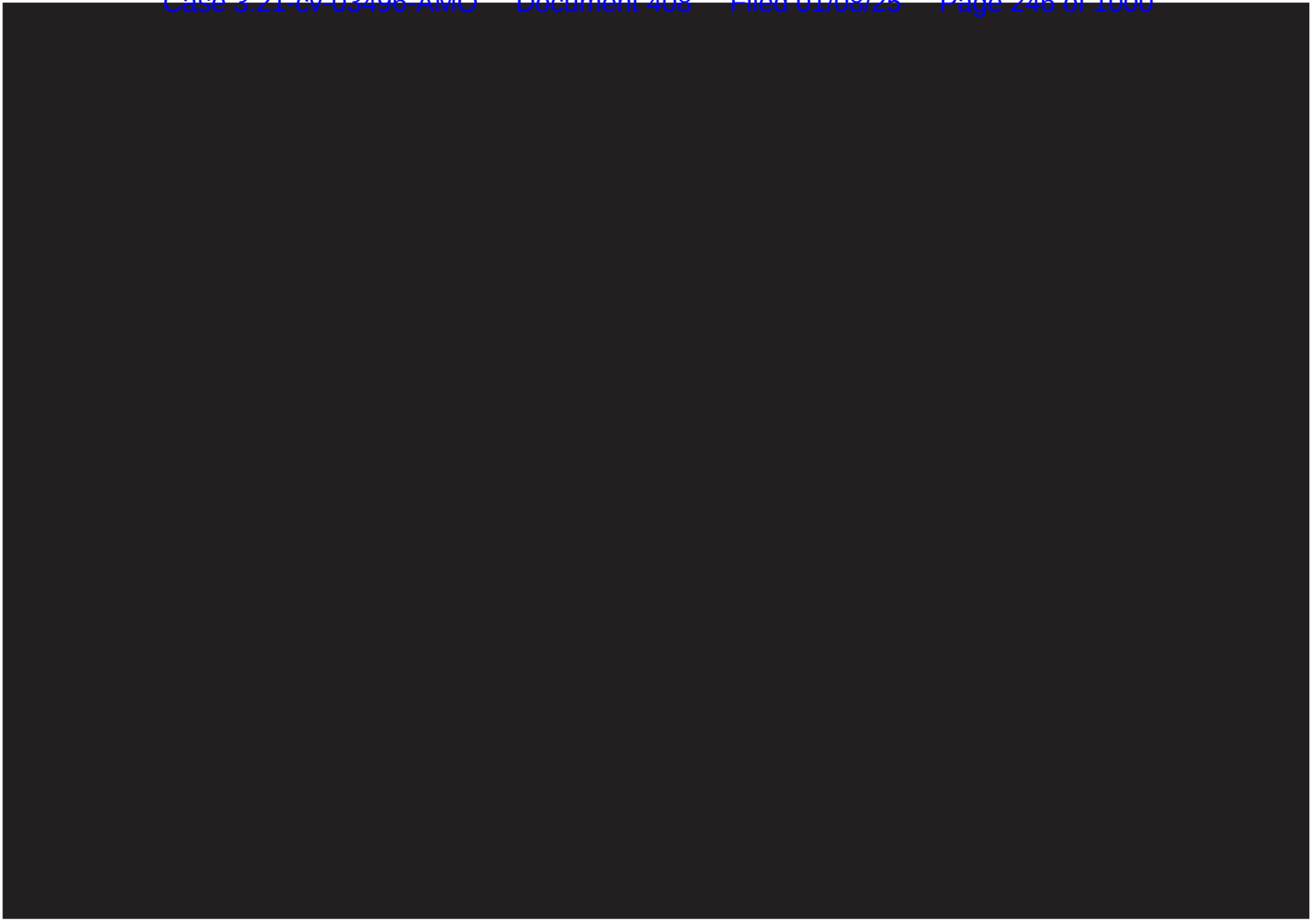


EXHIBIT 25

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
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STATEMENTS**







"As a final note, the capital and carrying costs are still extremely high for Intuitive Surgical products. This has been tolerated (and I do not use the term lightly) in a monopoly marketplace. Demonstration of value at the hospital level under our current circumstances is challenging. Although the business principles of margins and return to investors is "standard in the industry", as I described to you, the current business model of medical technology companies is unsustainable on a global scale. Our rising surgical supply costs are incompatible with the value delivered or return obtained. Competition in your space will have some effect on your business, and I urge you to stay ahead of the curve. There may be some pent up emotional backlash reflected in future sales when competition appears. "

- Dr. William Mayfield – Chief of Surgery, Wellstar – November 2016

The Intuitive Surgical logo, featuring the word "INTUITIVE" in a teal, sans-serif font, with a small square icon above the letter 'I'.

INTUITIVE



1. Small eight hospital IDN with local champion surgeons and executives; challenges with senior management
2. Multiple alignment meetings; willingness to share data
3. Key relationship established between Greg/Jonathan and Dr. Mayfield
4. Sylvia presented their data ?
5. Agreed to attend VIP
6. Much more aligned customer; xx systems; xx procedure growth; xx surgeons trained; open communication with Dr. Mayfield

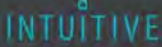


EXHIBIT 26

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
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TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

From: Lindsey Otradovec [Lindsey.Otradovec@intusurg.com]
Sent: 2/13/2019 10:44:57 AM
To: Chace Rawls [Chace.Rawls@intusurg.com]; Ron Bair [Ron.Bair@intusurg.com]
CC: Shelton Sykes [Shelton.Sykes@intusurg.com]
Subject: FW: Si service and Instrument reprocessing
Attachments: K182140.Letter.SE.FINAL_Sent001.pdf; K182140.IFU.FINAL_Sent001.pdf

This tells me.. that they are being coached by restore robotics or whoever the company is – to say... “give me the proof you can’t use the instruments more than x lives”.
 This is why regulatory needs to be in the room to talk through why there are a specific number of lives based on testing, patient safety, etc...

Thanks. LO

From: Mario Lowe <Mario.Lowe@intusurg.com>
Sent: Wednesday, February 13, 2019 10:31 AM
To: Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Mark Johnson <Mark.Johnson@intusurg.com>
Cc: Chace Rawls <Chace.Rawls@intusurg.com>; Katie Scoville <Katie.Scoville@intusurg.com>
Subject: RE: Si service and Instrument reprocessing

Hi Lindsey:

We can certainly provide the latest FDA 510(k) Clearance letters. But this will not provide the information requested in Item 1 below. See attached for an example of an Xi Clearance letter.

The request in item 1 - required limitation of the number of uses per Endo-Wrist Instrument

Can you provide more clarification on what the hospital is looking for?

Just so you know, FDA does not require nor limit the number of uses for our EW instruments. During the 510(k) submission process, we provide data to FDA that supports the stated number of lives for a particular instrument that we state in our labeling.

Mario

Mario Lowe
 Sr. Director, Regulatory Affairs

Mobile: (408) 410-1480
 Direct: (408) 523-2314
 Fax: (408) 523-8907
Mario.Lowe@intusurg.com

 INTUITIVE

1020 Kifer Rd
 Sunnyvale, CA 94086-5304 USA
Intuitive.com

From: Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>
Sent: Wednesday, February 13, 2019 7:26 AM

To: Mark Johnson <Mark.Johnson@intusurg.com>; Mario Lowe <Mario.Lowe@intusurg.com>

Cc: Chace Rawls <Chace.Rawls@intusurg.com>; Katie Scoville <Katie.Scoville@intusurg.com>

Subject: FW: Si service and Instrument reprocessing

Mark and Mario,

Can you provide me with any of the documentation for #1 below. The Baylor Health system is being very difficult as of late and we are trying to secure a live meeting to discuss things further. I assume you have a pdf file of the Xi and Si certification letters that we can send to them? Need your guidance here.

Any help you can provide would be helpful.

Thank you. Lindsey

From: Johnson, Tony <TONY.JOHNSON@BSWHEALTH.ORG>

Sent: Tuesday, February 12, 2019 2:03 PM

To: Chace Rawls <Chace.Rawls@intusurg.com>; Watson, Janet L <JANET.WATSON@BSWHEALTH.ORG>; Koreneff, Alan <ALAN.KORENEFF@BSWHEALTH.ORG>

Cc: John Wagner <John.Wagner@intusurg.com>; Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Shelton Sykes <Shelton.Sykes@intusurg.com>

Subject: [EXTERNAL] RE: Si service and Instrument reprocessing

Chase,

We look forward to meeting again, however, we feel the meeting will not be productive until we receive the information we have repeatedly requested from Intuitive. Please provide the information below that we have been requesting and we will be happy to meet:

Information requested by BSWH:

1. Provide documentation of the latest FDA certifications for Xi and Si robots and proving the FDA granted the 510K based on a required limitation of the number of uses per Endo-Wrist Instrument.
2. Provide documentation proving an FDA requirement to perform a preventative maintenance service to remove the PM recommended notification light.
3. Provide documented scope of what is included in a preventative maintenance service and what is specifically excluded. BSWH does not find any transparency in past and current contracts for Service that define what is included vs excluded.
4. Request for "Distributor Toolkit". Informed by Jason Cooley, Field Service Senior Manager, that it is "Unavailable", although we understand it is available in Europe.
5. Need actual documents noted as "Documentation" in the Master Agreement terms and conditions to be included with the Master Agreement.
6. Provide data pertaining to BSWH cases including surgeon specific data, length of surgery, instruments used and other technical factors to allow BSWH to assess outcomes, efficiencies, etc.
7. Records of maintenance performed to date on all Si and Xi systems. Records should include specific description of preventative maintenance, corrective maintenance and/or any other maintenance performed on each unit including dates of service.

Requests pertaining to Information Services Agreement:

8. Provide documentation showing an express requirement by the FDA that the Si and Xi robots must be re-certified with a security, vulnerability or other software patch before the patch is made available to Intuitive's customers or applied in a production setting
9. A copy of Intuitive's latest independent audit report – (i.e., with regarding to information security on controls within Vendor's organization concerning the privacy, confidentiality, security, processing integrity, and availability of the Products and Services made pursuant to standards established by an authorized or recognized standards setting organization (e.g., International Auditing and Assurance Standards Board; Statement on Standards for Attestation Engagements (SSAE) SOC 1 report; SSAE SOC 2 report; ISO/IEC 27000 series) and prepared by a reputable independent auditing firm)
10. A detailed description and screen capture showing the complete English-language translation of the binary data feed from the robots to Intuitive

Thanks in advance for your prompt response.

Tony W. Johnson

Senior Vice President and Chief Supply Chain Officer
Baylor Scott & White Health

Office: (214) 820-8336
Cell: (336) 409-6756

From: Chace Rawls [<mailto:Chace.Rawls@intusurg.com>]
Sent: Tuesday, February 12, 2019 11:31 AM
To: Johnson, Tony <TONY.JOHNSON@BSWHEALTH.ORG>; Watson, Janet L <JANET.WATSON@BSWHEALTH.ORG>; Koreneff, Alan <ALAN.KORENEFF@BSWHEALTH.ORG>
Cc: John Wagner <John.Wagner@intusurg.com>; Lindsey Otradovec <Lindsey.Otradovec@intusurg.com>; Shelton Sykes <Shelton.Sykes@intusurg.com>
Subject: {EXTERNAL} Re: Si service and Instrument reprocessing

All,

I just wanted to follow up and see if there is a time we could meet next week with our Service leadership as requested below. We continue to have a lot of issues being bubbled up to our Field Service team, and I just want to ensure we are all aligned appropriately. Let me know if there is a date/time that works for you all.

Thanks so much!

Chace Rawls
Director, Academic Key Accounts
South Central United States
Intuitive Surgical, Inc
Cell: 469-223-8350
E-mail: Chace.Rawls@intusurg.com

On Feb 6, 2019, at 4:33 PM, Chace Rawls <Chace.Rawls@intusurg.com> wrote:

All,

I hope this e-mail finds you all doing well.

During our meeting on Jan 15th, where we discussed the service contracts, we agreed to have some follow up discussions around our role in servicing your Si's. Since that time, it has also been brought to our attention that there have been some decisions made around reprocessing the instruments and replacing the chips that limit instrument lives.

While we understand that there is a need to control cost as much as possible, there are also some risks that should be considered. This topic has also come up as we negotiate the Master Agreement as there is language in that agreement specific to instrument usage. Given the critical nature and potential risk implications in these scenarios, I wanted to see if we could schedule a meeting to bring our VP of Field Service to Baylor and talk through all of these issues together. At the end of the day, our goal is to ensure that all considerations are being factored into the decision and that BSWH isn't exposed to unforeseen risks.

John Wagner is our VP of Field Service, based out of California. He is available to come to Dallas between Feb 19-21. Let me know if there is a time on any of those days that you all would be available to meet, and I will coordinate on our end

Thanks so much!

Chace Rawls
 Director, Academic Key Accounts
 South Central United States
Intuitive Surgical, Inc
 Cell: 469-223-8350
 E-mail: Chace.Rawls@intusurg.com

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EXHIBIT 27

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**



6 September 2019

U.S. Medical Devices

Intuitive Surgical Inc

Rating

Outperform

Target Price

ISRG

635.00 USD

Lee Hambright

+1-212-823-3557

lee.hambright@bernstein.com

John Rogers

+1-212-756-4333

john.rogers@bernstein.com

Intuitive Surgical: What do experts think about J&J's new surgical robot?

Medtronic and J&J have been pouring resources into their surgical robotics programs and are now within 1-2 years from market entry. We recently published a review of MDT's soft-tissue surgical robot (see [link](#)), which will be unveiled at an analyst day on September 24th.

Today, we perform a similar review on Verb Surgical, the joint venture between JNJ and Alphabet. JNJ has committed to commercialization of a general surgery robot in 2020.

In this note, we take the opportunity to (1) review robot-related commentary from JNJ management in recent years, (2) summarize of our conversations with robotics experts (surgeons, hospital administrators, engineers) who have first-hand experience with JNJ's robot, and (3) provide our key takeaways as JNJ prepares to launch the robot next year.

Investment Implications

We rate ISRG Outperform with a target price of \$635. Penetration of the addressable market for robotic surgery is very low, and we forecast robust growth. Competition is beginning to enter, but Intuitive has built a strong moat over the last 20 years. We see multiple catalysts that can drive the stock in 2019, including new systems (SP and Ion), high-growth geographies (Japan and China), and new technologies (augmented reality and informatics). For more on why Intuitive Surgical is one of our top picks, see our recent "[best ideas](#)" presentation, our valuation deep-dives (Part 1 and Part 2), and our [2Q19 recap](#). Model: ISRG

We rate JNJ Market-Perform with a target price of \$148. We continue to warm up to JNJ. Our neutral rating balances our bullish view on the Pharma business with our cautious view on Devices and more negative view of Consumer. In spite of ongoing litigation concerns, we believe JNJ can be a dependable safe haven during periods of market turbulence. For more on JNJ, see our recent [thesis review](#), our [SDC takeaways note](#), and our [2Q19 recap](#). Model: JNJ

Close Date	5-Sep-2019			
ISRG Close Price (USD)	508.17			
Target Price (USD)	635.00			
Upside/(Downside)	25%			
52-Week Low	430.24			
52-Week High	589.32			
SPX	2,976.00			
FYE	Dec			
Indicated Div Yield	NA			
Market Cap (USD) (M)	58,568			
EV (USD) (M)	55,939			
Performance	YTD	1M	6M	12M
Absolute (%)	6.1	3.4	(7.0)	(5.3)
SPX (%)	18.7	4.6	6.7	3.0
Relative (%)	(12.6)	(1.2)	(13.7)	(8.3)



Analyst Page



Financials



Bernstein
Events



Company
Page

EPS Reported	F18A	F19E	F20E
ISRG (USD)	10.99	12.23	14.39
SPX	159.61	162.91	179.71

Financials	F18A	F19E	F20E	CAGR
Operating Earnings (M)	1,537	1,691	1,985	13.6%
Net Earnings (M)	1,305	1,464	1,742	15.5%
Adj. Op. Margin (%)	41.28	38.56	38.86	
ROIC (%)	19.54	16.39	15.80	
Organic Sales Grwth (%)	18.67	17.75	16.49	

Valuation Metrics	F18A	F19E	F20E
P/E Reported (x)	46.26	41.56	35.32
P/E Adjusted (x)			
PEG Adjusted (x)			
EV/EBITDA (x)	33.99	30.40	25.99
Div Yield (%)	0.00	0.00	0.00

See Disclosure Appendix of this report for important disclosures and analyst certifications

www.bernsteinresearch.com

Published 06-Sep-2019 06:58 UTC

Confidential

Intuitive-00278203

DETAILS

We recently published a [review](#) of Medtronic's soft-tissue surgical robot, which will be unveiled at an analyst day on Sept 24th. We thought it would be valuable to perform a similar exercise for the general surgery robot from Verb Surgical, the joint venture between JNJ and Alphabet Inc's Verily Life Sciences. JNJ management has committed to commercialization in 2020.

Mirroring our note on the MDT robot, this note includes the following three pieces:

- + Synthesis of robot-related **commentary from JNJ management** over the past few years, including insights regarding tech/features, target procedure sets, potential commercial strategy, etc.
- + Summary of our recent **conversations with key opinion leaders** who have first-hand experience operating with JNJ's robot
- + Our **key takeaways** as JNJ prepares to launch the robot in some capacity next year

Summary views

Our ongoing discussions with key opinion leaders continue to validate the notion that customers are eager for competition in surgical robotics. Surgeons and hospital administrators agree that competition will be a good thing for the market. But merely coming to market won't be enough; to make a difference, we believe the competition needs to be compelling. Surgeons do not like to change if they can avoid it, and they have invested a lot of time and effort in building skills on da Vinci.

Ultimately, we expect both MDT's and JNJ's entry into surgical robotics will be market-expanding. We believe this is a highly attractive market with room for a few players. With that said, we do expect to see market segmentation based largely on cost and procedural complexity. Our research suggests MDT's robot may have some material shortcomings relative to ISRG's da Vinci platform, indicating that MDT may carve out a niche specializing in more cost-sensitive hospitals/geographies and in relatively simple (i.e., inexpensive) procedures. On the other hand, KOLs are generally impressed with JNJ/Verb's prototype, which many users believe comes closer to equal footing with da Vinci.

Recall that MDT has made a number of design trade-offs with its robot in an effort to prioritize (1) reducing cost as a barrier to robotics adoption (by achieving cost parity with laparoscopy), and (2) getting to market before the Verb rollout (by incorporating a number of off-the-shelf components into the robot's design). Meanwhile, JNJ has taken a different approach. Commentary from management makes it clear that the company's value proposition in robotics will be part of a broader "digital surgery" platform—which refers to the integration of surgical robotics, supporting software, and a smart/interconnected operating room. JNJ plans to "dramatically revolutionize surgery" by leveraging Alphabet's expertise in big data and AI to make surgery more predictable and more replicable—thereby improving patient outcomes. Meanwhile, many of the secondary and tertiary aspects of JNJ's strategy are similar to what we've heard from MDT, including: increased affordability, differentiated end effectors, a smaller footprint in the OR, etc.

It's easy—and understandable—to get caught up in all ways that MDT and JNJ could potentially leverage their late-mover advantage to target Intuitive where the company is most vulnerable. But it's important to remember that ISRG is not standing still. Management has been preparing for competitive entry for years, so we anticipate the company has formulated competitive responses. We have seen some of these materialize already (e.g., shift to operating leases and usage-based arrangements), and we expect Intuitive has a few more tricks up their sleeves (e.g., augmented reality, machine learning, maybe a new low-cost system?).

We believe that Intuitive has built strong barriers to entry during the 20 years of market leadership in robotic surgery. That said, we are intrigued by JNJ's digital surgery strategy. And Auris brings a strong set of assets to JNJ's program. JNJ management has repeatedly indicated that being "right" is more important than being "fast" in this case, and we expect management to take their time developing a differentiated robotic surgery platform. We see upside to JNJ numbers once more is known about the company's digital surgery platform.

Whatever happens, we continue to have conviction that it will take multiple years for a legitimate competitive threat to ISRG to materialize. Initiating a limited commercial rollout is just the first step for MDT and JNJ, and many investors underestimate the time required to build out procedures, gather evidence, gain international approvals, train surgeons, etc. Intuitive has built a formidable competitive moat over the last two decades, and we expect the company to maintain its leadership position in the robotic surgery market for the foreseeable future.

SYNTHESIS OF JNJ MANAGEMENT COMMENTARY

ROBOTICS TIMELINE: FROM DISMISSAL AND SKEPTICISM TO STRATEGIC PRIORITIZATION

Surgery is the largest business within JNJ's Medical Devices segment, accounting for 37% of device sales (and 12% of overall corporate sales) in 2018. Like MDT Covidien, JNJ Ethicon is a market leader in traditional open and laparoscopic (i.e., non-robotic) surgery. For both companies, entry into the soft-tissue robotics market will entail heavy cannibalization of existing procedure volumes. It therefore comes as little surprise that both have been late to the party. Over time, however, the messaging from both companies around surgical robotics has evolved from dismissal and skepticism, to limited acceptance, to what today can be safely described as strategic prioritization.

During the early days of Intuitive's rise, JNJ (like MDT) largely dismissed the mainstream potential of robotics in general surgery. But after watching ISRG steadily take share from open surgery and laparoscopy for the better part of two decades, both companies eventually threw in the towel. They are now racing to catch up.

While MDT and JNJ dithered, ISRG rolled out four generations of the da Vinci platform—and the company continues to drive innovation in the field and extend its lead with new instruments (e.g., stapling), robotic systems (e.g., SP, Ion), and enabling technologies (e.g., Iris augmented reality technology).

JNJ management first began to acknowledge the potential viability of robotics in general surgery in the early 2010s (Exhibit 1).

EXHIBIT 1: JNJ management hinted at a potential interest in robotic surgery as far back as 2010

- ✦ *"Certainly, there are lot of new [surgical] modalities out in the marketplace today, a lot of them are very early... [including the] next generation [of] minimally invasive surgery... We're excited by all the innovation that's being done in that area, because I think it helps to grow the market faster..." – K. Licitra 6/3/10*
- ✦ *"Our focus is to really invest across the broad spectrum of the possible solutions [in minimally invasive surgery]... We continue to look at all the different modalities that are out there and different technologies that are out there. I'm not going to get into specific detail today in terms of exactly what we're investing in, but we're certainly well aware of all of the different ones out there, and whether or not they might have a play in our portfolio in the future." – K. Licitra 6/3/10*

Source: JNJ 2010 Investor Day

As of 3Q 2012, management was emphasizing the strategic importance of (1) cost, (2) end effector technology, and (3) external partnerships (Exhibit 2).

EXHIBIT 2: Initially, management emphasized the importance of cost, end effector technology, and external partnerships

- ✦ *"So, our approach [to robotics] is a three-pronged approach. So, first... there is a natural balance around where a laparoscopic versus robotics fits in... [Robotics] enables [surgeons] to do more procedures that may not have as strong laparoscopic skills, but at the same time there is more data coming out to say where is it cost effective and where is it not cost effective?... Two is what we call our... end effectors strategy, which is, if you think about the devices that are actually doing the tissue effect, so whether it's an energy device that's doing cutting and sealing, a stapling device, or a suturing device, we feel that we can do that better than the competition... And then third is we're looking at let's explore opportunities and partnerships in robotics, because we do think that there may be some opportunities for disruptive plays." – G. Pruden 9/10/12*

Source: 2012 Morgan Stanley HC Conference

After a few years of internal development and limited robotics-related news flow, JNJ announced the formation of Verb Surgical Inc. in collaboration with Alphabet Inc's Verily Life Sciences in December 2015. The announcement was a major step for JNJ, and it put an exclamation mark on the "partnerships" prong of the company's strategy in surgical robotics. It was also a strong signal to the market that management was finally serious about prioritizing the robotics program and competing with Intuitive.

EXHIBIT 3: The formation of Verb (in collaboration with Alphabet Inc's Verily Life Sciences) gives JNJ access to world-class data analytics capabilities

- ✦ *"Johnson & Johnson today announced that Ethicon, a medical device company in the Johnson & Johnson family of companies, has executed a definitive agreement to enter into a strategic collaboration with Google, Inc., working with the Life Sciences team on advancing surgical robotics to benefit surgeons, patients and health care systems... The companies seek to develop new robotic tools and capabilities for surgeons and operating room professionals that integrate best-in-class medical device technology with leading-edge robotic systems, imaging and data analytics." – JNJ press release 3/26/15*
- ✦ *"[Our collaboration with Google] is a continuation of what we discussed at the MD&D Business Review Day a year ago... And I think that's going to provide us some acceleration to the plans we were already anticipating... We would expect this collaboration would take I would say several years for us to come to market with the new type of robotic surgery that we think will dramatically revolutionize surgery. So, I think it'll take some time to do that. But we're accelerating our efforts there, and I'd say it's a couple of years away." – D. Caruso 4/14/15*

Source: JNJ press release archives, JNJ 1Q15 Earnings Call

After the Verb announcement in 2015, JNJ management initially guided to being "a couple of years away" from launch (see Exhibit 4).

EXHIBIT 4: After the formation of Verb in 2015, JNJ initially guided to launching the robot in 2017-2018...

- ✦ *"We see [the general surgery robotics platform] as really not something to have an impact, where I would say over the next six months to 12 months. This is likely more over a two- to three-year-plus timeframe." – A. Gorsky 7/14/15*
- ✦ *"In terms of the development stage, yes, we're in the phase where we are integrating... our technology with the Google technology... from a systems-engineering perspective, and integrating informatics into the design of our robot. So, we're looking, I would say...on the earlier side of [a 1-5 year] range... I would say it's the next couple years. We'd obviously like to accelerate that, but we want to make sure that we stay true to our value proposition." – G. Pruden 10/13/15*
- ✦ *"[The robot is] in research and development, there's prototypes developed. I would say it's a couple years away from actually hitting the market." – D. Caruso 2/23/16*
- ✦ *"With the transition from concept development to product development with the creation of Verb, we're in full swing in terms of product development. We're scaling up in terms of capabilities in hiring... We have an important milestone at the end of the year, when we transition from concept development to full product development... And at the end of the year, our critical milestone is to put the system together that feels like, looks like, works like a prototype." – M. del Prado 5/18/16*
- ✦ *"We still hope to be the second robotics player in the marketplace. But more importantly [our focus is on] really transforming the offering. There's not only the extension of the human hands, which is what we have today. But how do we transform the marketplace to add data analytics to add decision-making tools, to be able to make the surgeries more democratized, more reproducible, and better outcomes?" – M. del Prado 5/18/16*
- ✦ *"Verb Surgical Inc. announced today that the company has demonstrated its first digital surgery prototype... The digital surgery platform included all elements of the company's five technology pillars: robotics, visualization, advanced instrumentation, data analytics, and connectivity – developed by Verb and its collaboration partners." – Verb Surgical press release 1/26/17*

Source: JNJ 2Q15 Earnings Call, JNJ 3Q15 Earnings Call, 2016 RBC Healthcare Conference JNJ 2016 Investor Day, Verb Surgical press release archives

However, in 2017 JNJ's launch guidance was revised to 2020, and since then, management has been generally consistent in targeting an initial rollout at some point in 2020 (see Exhibit 5).

EXHIBIT 5: ...but in 2017, JNJ's launch guidance was revised to 2020

- ✦ *"[The general surgery robot] probably won't be in your model until 2020, to be honest with you, because the reality is that – that particular deployment, but we're going to be doing that work with and we will have systems deployed in hospitals before then, but it won't move the needle [until 2020]." – S. Peterson 6/15/17*
- ✦ *"The working prototype was already available at the end of last year. And in fact, I know Alex [Gorksy] actually tried it out. So, we're not behind there, we're actually on track with that working prototype." – D. Caruso 7/18/17*
- ✦ *"Capitalizing on the unique strengths of Johnson & Johnson, of Alphabet and Verb, we are designing a best-in-class differentiated at launch and we are on track to be in market by 2020." – M. del Prado 5/16/18*
- ✦ *"2020 is, we're going to be in market, in major market globally... We're now in conversations with both the FDA and the notifying bodies of Europe... We're also engaging the regulatory authorities of the major markets in Asia. So, we now understand 'what will it take from a clinical perspective, regulatory perspective to get there' and we will be in one of those markets by 2020." – M. del Prado 5/16/18*

Source: 2017 Goldman Sachs Healthcare Conference, JNJ 2Q17 Earnings Call, JNJ 2018 Investor Day

Over the last year, JNJ management has been clear that the company is playing the "long game" in robotics, having referred to robotics as a "midterm play" and as just one component of a broader "digital surgery" platform that is expected to evolve over the course of "the next 5, 10, 15 years" (see Exhibit 6).

EXHIBIT 6: JNJ management expects the digital surgery revolution to extend through the 2020's and beyond

- ✦ *"Materiality is tough within a \$27 billion business. But rather than give you a specific date of when we can hang our hat on it, I think what we're doing is we're playing for the long game. So, we see this at the end of the next decade. Nothing is going to take that long to be material to J&J. But that's how we're thinking about this, how can you have an integrated network that's much more impactful on the healthcare system overall that leads to better efficacy at lower cost." – J. Wolk 12/5/18*
- ✦ *"We believe we continue to be on track [with Verb] going forward... You're going to see continued news about our robotics platform over the course of 2020 and beyond, but what's so important about this is we're taking an outlook that digital surgery will be an important dynamic for the next 5, 10 and 15 years. And what we want to make sure is that we get out in a timely manner but that we're also out in a manner that ensures we're competitive and ensures, ultimately, that we're making an even bigger difference in this area as we go forward." – A. Gorksy 1/22/19*
- ✦ *"Innovation is really the core of our plan in terms of getting to those above-market levels in 2020. Robotics, we remain very excited about. I would say that's more of a midterm play. It's not as significant as it relates to that 2020 [growth] objective." – C. DeIOfreice 3/14/19*

Source: JNJ 4Q18/1Q19 Earnings Calls, 2019 Barclays Healthcare Conference

More recently, we sense some expectations management from JNJ, as the company has begun to emphasize that it's not about getting to market fast, it's about getting to market with the right robot (see Exhibit 7). Along these lines, JNJ management have repeatedly mentioned ongoing work by Dr. Fred Moll to reassess broader robotic programs at JNJ and ensure the company is maximizing the value of the cards they are holding. Dr. Moll co-founded Intuitive and came to JNJ via the Auris acquisition. Some investors believe the work Fred is doing to reassess programs (e.g., to integrate concepts/technologies from Auris into the Verb platform) may lead to a better robot but may also delay the timeline.

Our conversations with JNJ support this view that the 2020 timeline may slip. The company emphasizes that it "would be a waste not to step back and reassess" given new assets from the Auris acquisition. To questions about timeline, management notes that while a major-market launch in 2020 is still the "official" timeline, they are "looking at this now and looking to provide an update later this year or early next year."

Though it's possible it will come sooner, we currently expect JNJ to initiate limited launch of the Verb platform beginning in 1H 2021 (i.e., about a year after MDT initiates the first phase of its limited OUS rollout). We do not expect meaningful revenue contribution until later in 2022.

EXHIBIT 7: Over the past couple of months, JNJ has emphasized that getting the platform "right" is more important than getting to market quickly, suggesting the timeline may slip past the 2020 launch target

- ✦ *"So, as I mentioned earlier on the call, we're real pleased with the Auris Health acquisition. It's off to a great start. Not only did we get some great products there and some great technology, but we secured one of the pioneers with respect to robotic surgery in Dr. Fred Moll and his team. So, they're currently looking at and assessing all of our platforms. We think it's prudent of us to utilize that expertise to look at not just what we're doing for the Monarch Platform in lung cancer and bronchoscopies, but also take a look at Orthotaxy, as well as our partnership with Verily to see how we can make sure that **it's not a matter of coming to market fast, but coming to market best**. And so, we want to make sure that we've got a differentiated product, one that competes with the current product offerings that are out in the marketplace for the next three, five, 10 years down the road. So, that's how we're approaching it."*
—J. Wolk 7/16/19
- ✦ *"We would be fools to not take full advantage of what Fred's mind [in terms of] getting him to look at our partnership with Verily, looking at everything we're doing in orthopedics, working with our lung cancer initiative. So we're in keeping all of the teams very focused on milestone attainment, and we have a very small team assessing how do we create more collective value together. So it's not a distraction or we're progressing milestones. I mean, we just had over the past 60 days, we've had over 35 different surgeons from around the world working on our Auris platform, working on our Verb Verily platform, doing end-to-end procedures in general surgery, in urology, in thoracic with very positive results. We've been actively engaged with the FDA authorities on both platforms. We are advancing full steam ahead on the development programs... I get asked a lot of questions around 2020 right now. **We're not changing from that date, but we are going through a thorough assessment to see how do we create the most amount of value, not just in year one, but quite frankly, this is about the next 10, 20, 30 [years] — decades of really changing the standard of care.**"*—A McEvoy, 9/6/19

Source: JNJ 2Q19 Earnings Call, 2019 Wells Fargo Healthcare Conference (emphasis added)

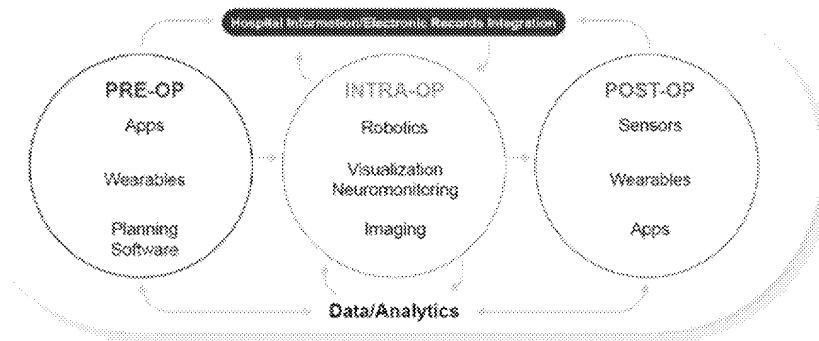
Note that while the Verb collaboration was an important first step in JNJ's attempt to develop a truly differentiated robotics platform, it hardly guarantees success—even with a partner as capable as Alphabet. In our view, barriers to entry in robotic surgery are formidable given ISRG's first-mover advantage and 20-year head start. Despite JNJ's history of leadership and innovation in open and laparoscopic surgery, robotics is a fundamentally different arena, and one that requires fundamentally different expertise. In our view, MDT and JNJ have a lot of ground to make up, and both will need to work hard for the right to compete in this market. Intuitive has been singularly focused on soft-tissue robotic surgery for twenty years.

Fortunately for JNJ shareholders, we believe management recognizes that the only way to take meaningful share from ISRG is to offer surgeons a clearly differentiated value proposition—rather than merely developing a "me too" robot to check the box. The trade-off, naturally, is speed to market. And MDT now looks poised to commercialize their robotics platform before JNJ.

JNJ INTENDS TO TRANSFORM ROBOTIC SURGERY INTO DIGITAL SURGERY

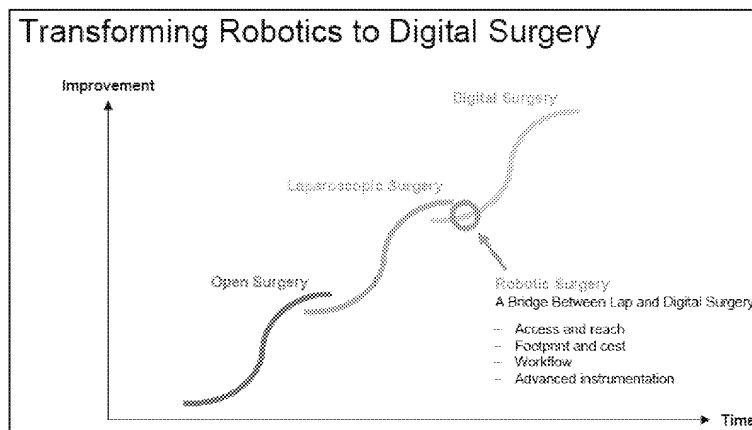
As was hinted at in the inaugural Verb press release, JNJ has bigger aspirations than simply launching a general surgery robot. In fact, robotics is just one facet of JNJ's ambitious plan to revolutionize surgery over the coming years and decades. Specifically, management believes that JNJ can offer compelling value proposition in robotics as part of a broader "digital surgery" platform—which refers to the integration of surgical robotics, supporting software, and a smart/interconnected operating room.

EXHIBIT 8: In the company's Digital Surgery strategy, JNJ is focused on improving surgical outcomes by leveraging data pre-operatively, during procedures, and post-operatively



Source: JNJ May 2018 Investor Day

EXHIBIT 9: Management views robotic surgery as a "bridge" between lap and "Digital Surgery"



Source: JNJ May 2018 Investor Day

We are intrigued by JNJ's vision of digital surgery, and we agree that leveraging AI and informatics has the potential to improve patient outcomes beyond what robotics alone can achieve. Some early examples of JNJ's efforts in this area include:

- (1) **C-SATS** (i.e., Crowd-Sourced Assessment of Technical Skill): a cloud-based, AI-enabled surgical skills assessment system that allows for best practice sharing among surgeons
- (2) **Health Partner** platform: a digital ecosystem (i.e., website, mobile app, care portal) that helps guide patients through surgical preparation and recovery, while also enabling real-time interaction with care providers
- (3) **SPI** (Surgical Process Institute): provides digital, standardized workflows and checklists for surgeons to reduce variability and improve patient outcomes

JNJ has not been shy about setting high expectations for its digital surgery platform. Management have called it a "true quantum leap in surgery", a "superior surgical experience", and have compared its disruptive potential to the evolution from "the mainframe computer to mobile digital devices" (see Exhibit 10).

EXHIBIT 10: JNJ's robotic surgery platform is part of a grander vision of "Digital Surgery"—which refers to the integration of surgical robotics, supporting software, and a smart/interconnected operating room

- ✦ *"We can see a future in which the surgeon is no longer isolated in the OR, but through our system, we'll be able to connect to critical data, imaging and diagnostic information; information that will help the surgeon make the best, most accurate decisions as and when they're needed." – G. Pruden 10/13/15*
- ✦ *"We think what's available today is really the model that's more like the main frame computer 50 years ago. We intend to go to the iPad version, and that's what we want to launch. With a more integrated informatics [and] diagnostics...that are available for the surgeon around the world at a lower cost to serve." – G. Pruden 10/13/15*
- ✦ *"The key differentiator of our robotics platform is in fact this partnership with Google that allows the robotic platform to have navigation techniques and data capture and algorithms that make the robots smarter and smarter each time a surgery is performed—and the data can be shared." – D. Caruso 2/23/16*
- ✦ *"We believe that we understand technology better than our competitors do, because of all the work that we do and how we partner with tech companies. And we believe that we actually can, therefore, do this in a different way and be more successful over time." – S. Peterson 6/15/17*
- ✦ *"We intend to transform robotic surgery into digital surgery... If I only have one analogy for you, I would say it's like going from the mainframe computer to mobile digital devices. So, we're going...from simply enabling surgical jobs, to building an intelligent connected operating room environment. We are poised to disrupt the fast-growing robotics market. The Verb platform represents a true quantum leap in surgery." – M. del Prado 5/16/18*
- ✦ *"Robotics was really an extension of your human arms to be able to perform task that you could not do, because of the limited spaces. However, digital is all about capturing the information that goes on in the operating room, take advantage of the pre-operative information to be able to guide the procedure more precisely and be able to analyze information after the procedure and feed it back to make surgeons better, who are they on their best day and within healthcare systems also improve that." – M. del Prado 5/16/18*
- ✦ *"We also have a partnership with Verily to really create kind of an unparalleled connected system that will allow this image-guided, smart digital surgery platform that really changes how surgeons do pre-surgical planning, intraoperative surgical planning and then post-op planning to really make the surgery safer, more efficient and to really improve the experience." – A. McEvoy 2/28/19*

Source: JNJ 3Q15 Earnings Call, 2016 RBC Healthcare Conference, 2016 UBS Healthcare Conference, 2017 Goldman Sachs Healthcare Conference, JNJ 2018 Investor Day, 2019 SVB Leerink Healthcare Conference

Importantly, however, JNJ does not yet possess the requisite data to execute on this vision of digital surgery, so it will not be a competitive advantage right off the bat. In effect, JNJ will be asking customers to sign up for a robot so that the company can start the process of collecting data. However, the robot is being designed from the ground up to eventually integrate into JNJ's digital ecosystem. We believe this is a superior design decision than accelerating the development timeline and later retrofitting the robot, but we also acknowledge that this may be the difference between JNJ being the second or the third market entrant.

Notably, Intuitive has been collecting data on procedures since it began placing robots twenty years ago, and the company has various amounts of data on over six million procedures. Intuitive has already begun to use data to help hospitals identify best practices and improve outcomes. JNJ's vision for Digital Surgery is clearly more expansive than the scope of Intuitive's current data-related offerings. But it remains to be seen whether JNJ can build data collection capability and useful applications that can overcome Intuitive's current advantage (i.e., procedure database and applications).

EXHIBIT 11: JNJ's data analytics capabilities won't be a competitive advantage right off the bat; the company will effectively be asking hospitals to sign up for a robot so they can start the data collection process

- ✦ *"We're not just creating a robot, we're creating systems integration for the future. Because if you want to deliver against that capability, we have to have an integrated plan to deliver against machine learning, all that information management. If you don't do that... from the beginning, you can't do that at the end."*
— M. del Prado 5/18/16
- ✦ *"At launch, there will be limited clinical information. However, because of this digital ecosystem that we're building, our ability to capture information, be able to analyze that do real world evidence immediately, will be harnessed and will move very rapidly."* — M. del Prado 5/16/18
- ✦ *"[Robotics] enables surgery, but I don't know that it leads to a better outcome. There's no data that suggests that. We want to have platforms that generate data that suggests it's a better outcome for the patient. There's better visual acuity. It becomes part of an integrated network. So, each surgery that's performed learns and informs the next surgery in that network."* — J. Wolk 12/5/18

Source: JNJ 2016 Investor Day, JNJ 2018 Investor Day, Citi 2018 Healthcare Conference

A SMALLER FOOTPRINT IS INTENDED TO INCREASE UTILIZATION—AND DECREASE PER-PROCEDURE COST

JNJ management has repeatedly emphasized affordability as a key pillar of the company's differentiated strategy in robotic surgery. In fact, before the formation of Verb in late 2015 (and the resulting emphasis on digital surgery), most of JNJ's robotics commentary was centered around improving per-procedure economics. Management sees an opportunity to lower hospitals' costs "in terms of disposables as well as capital".

EXHIBIT 12: From the beginning, JNJ has identified cost as a barrier to robotics adoption

- ✦ *"I think [robotics] is going to have to also be more cost-effective than it is today, because if you look kind of the installed base for robotics, it's really very developed market focus. I mean, I think 80% of the all the installations are in both U.S. and Western Europe. And that's for a reason... Longer term, we will be looking at an opportunity to enter the market where we can create value for our shareholders."*
— G. Pruden 1/22/13
- ✦ *"I'm not sure [robotics] is the right answer for all procedures, because we are getting into a very cost-effective modality right now, based on procedures. And... I think our customers are really asking for value, which is don't just show me that you have a good outcome, show me that you add value to our system, as well."* — G. Pruden 1/22/13
- ✦ *"I think there is still a lot of unmet need based on the current model of robotics. It has enabled minimally invasive surgery to be done where penetration has been low, prostatectomy, hysterectomy. We believe that it can enable difficult surgeries, cancer surgeries for example. But in the general surgery space will it replace base laparoscopic surgery in cholecystectomy or appendectomy? I don't think the cost will justify it, quite frankly."* — M. del Prado 5/22/14

Source: JNJ 2013 Investor Day, JNJ 2014 Investor Day

It is clear that a reduced footprint in the OR will be a key component of this strategy. JNJ is betting that improvements with respect to ease-of-use and mobility within the OR will help increase robot utilization—thereby decreasing per procedure cost (as the capital equipment charge is amortized across a larger number of procedures).

EXHIBIT 13: A smaller footprint within the OR will be a key component of JNJ's strategy to improve per-procedure economics in robotic surgery

- ✦ *"I do think that there are opportunities [in robotics], not just for lower cost... but [for] improvements in functionality, ease-of-use and movement within the OR, right?... The analogy that people have said to me is where we are in robotics today is where we were 50 years ago with computers that took up the entire room. You are going to get to a point where it's going to be a laptop size sometime in the future."*
— G. Pruden 5/22/14
- ✦ *"We also think there is some inherent limitations to today's robotic surgery environment. When you frankly look at the size and the scale of some of the existing innovation and if you look at what's happened with other technology platforms, as they have become smaller, more flexible, more mobile, and frankly, have a better ability to integrate various activities around the OR, that's where we think we can really make a difference."* — A. Gorsky 7/14/15
- ✦ *"If you look at the robotics installed base as it is today, it's very much focused on the developed markets versus the emerging markets and that's because cost to serve is disproportionately out of balance. And we think that there are opportunities to have a much smaller footprint in terms of a technology, a lower cost to serve in terms of disposables as well as capital that we think can play across a broader range of surgical procedures in a cost-effective way."* — G. Pruden 10/13/15
- ✦ *"We don't believe the capital play here for our innovation is going to be \$2 million per hospital. So, we're going to provide a lot more flexibility in terms of that... We have decided that the terms of our value proposition, which will be a lower cost to serve, [and] a smaller footprint."* — G. Pruden 10/13/15
- ✦ *"As the largest surgery business in the world and with our unique smaller footprint, more flexible design than system on the market, we aim to drive greater global access to hospital operating rooms."*
— P. Shen 5/16/18
- ✦ *"The robots of today are large. They're very expensive. They take a tremendous amount of training to be able to deal with them. They don't shorten the procedure; they lengthen the procedure. Clinical outcomes have not been demonstrated to be better; and more importantly they're also not mobile from one operating room to the other operating room."* — C. Roemer 12/12/18

Source: JNJ 2014 Investor Day, JNJ 2Q15 Earnings Call, JNJ 3Q15 Earnings Call, 2016 RBC Healthcare Conference, JNJ 2018 Investor Day, BMO 2018 Healthcare Conference

JNJ'S VALUE PROPOSITION IN ROBOTICS IS HEAVILY TIED TO THE QUALITY OF ITS END EFFECTORS

Like MDT, JNJ management has indicated that differentiated end effectors will be central to the company's value proposition in robotic surgery. Covidien and Ethicon are market leaders in end effector innovation, and both MDT and JNJ like to emphasize the barriers (e.g., years of investment, resources, know-how, etc.) faced by competitors—ISRГ included—attempting to build a competitive end effector portfolio from the ground up. While ISRГ's end effectors have improved considerably in recent years, da Vinci users still point to the company's end effectors as a potential area of vulnerability.

EXHIBIT 14: Like MDT, JNJ is expected to leverage its strength in end-effector technology

- ✦ *"Our plan right now in terms of robotics is kind of two-step and twofold. So first and foremost, it's around we're looking at opportunities to partner with robotics in what we do best, and where our capabilities are, and where we can bring value. And that is what we call the end effectors. So, on the end of the robots, we have devices that create a tissue effect. They seal tissue, they cut tissue, they bring tissue together. That's the business that we're essentially in, in producing both staplers, endocutters, energy devices, sutures – that's our world... That is what we do best, and that's the end of the market where we're going to lead and we're going to drive." – G. Pruden 1/22/13*
- ✦ *"One [prong of our strategy in general surgery robotics] is an end effector strategy...I am really interested in the aspect of the tissue effects of the business—so cutting, sealing, dissecting, stapling, sewing tissue. We actually have a partnership with the Intuitive team on certain aspects of that, which is really good. But we're also going to pursue our own de novo approach..." – G. Pruden 5/22/14*
- ✦ *"We're already in the market for robotics... in terms of particular procedures where our Ethicon products are used at the end of the robot, at the actual procedure end of the robot. So, we'll continue to do that [as we develop our own robotics program internally]." – D. Coruso 4/14/15*
- ✦ *"With our proven capability in advanced instrument, in combination with 3D HD visualization, our system is being designed with aim of increasing surgical efficiency and confidence across surgical procedures." – P. Shen 5/16/18*
- ✦ *"[We're addressing common complains re] advanced instrumentation, because the magic moment is when an endocutter is fired or an energy device is fired. And you've heard from customers that they're making compromises today because of the lack of availability of advanced instrumentation. We're going to deliver those as well." – M. del Prado 5/16/18*

Source: JNJ 2013 Investor Day, JNJ 2014 Investor Day, JNJ 1Q15 Earnings Call, JNJ 2018 Investor Day,

ACCESS/REACH & TARGET PROCEDURES

While JNJ has not been particularly specific about procedural targets for the robot, management commentary has touched on a broad array of potential procedure sets. What the initial focus looks like when the robot first launches is unclear, but we get the sense that JNJ's long-term goal is to be able to do any procedure that Intuitive can do.

On one hand, JNJ's end-effector-focused strategy seems to suggest the company could create an advantage in more complex procedures where complex instruments are necessary (e.g., staplers, vessel sealers). On the other hand, JNJ's cost-focused strategy suggests the company's greatest advantage may be on simpler procedures, where Intuitive may be unlikely to match JNJ's lower per-procedure prices.

We believe JNJ is more likely to focus on more complex procedures at the outset to demonstrate the capability of their system. But we would anticipate rapid expansion to broader sets of procedures.

EXHIBIT 15: JNJ's robot will provide surgeons with multi-quadrant access, and management has highlighted a wide range of potential target procedures

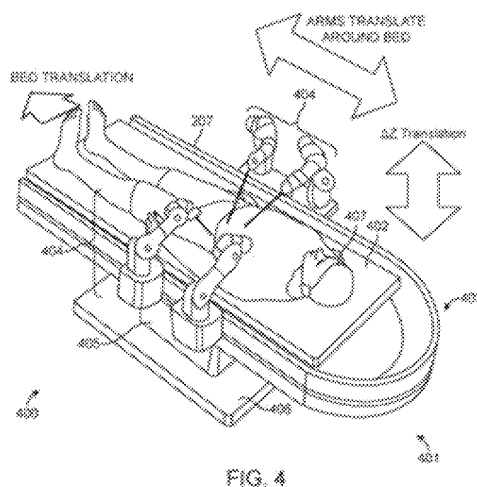
- ✦ *"I think there is still a lot of unmet need based on the current model of robotics. It has enabled minimally invasive surgery to be done where penetration has been low—prostatectomy, hysterectomy. We believe that it can enable difficult surgeries, cancer surgeries for example. But in the general surgery space will it replace base laparoscopic surgery in cholecystectomy of appendectomy? I don't think the cost will justify it, quite frankly." – M. del Prado 5/15/14*
- ✦ *"The unique workflow, advanced imaging, data analytics, [and] expanded reach to all four quadrants of the body along with an advanced instrumentation has the potential to advance robotic minimally invasive surgery with great benefit for patients." – M. Fitchet 5/18/16*
- ✦ *"We are creating a platform with the potential we can give every patient access to the outcomes of the best surgeon. Our focus will be to help drive complex surgical oncology procedures to minimally invasive approaches and to help improve and standardize the outcomes in challenging procedures, such as thoracic lobectomy, gastrectomy and low anterior resection." – M. Fitchet 5/18/16*
- ✦ *"I think the sweet spot for really transforming surgery is in areas where it's deep, it's confined, it's inaccessible like the thoracic cavity, like low anterior resection. These are two areas where the penetration of minimally invasive surgery has not been as good as the other areas. So, this is where we believe that with the better surgical platform robotics capabilities that we will be able to penetrate." – M. del Prado 5/18/16*
- ✦ *"Our system is being designed to provide multi-quadrant access to enable broader range of surgical procedures beyond the prostate surgery to colon, gastric, thoracic surgeries." – P. Shen 5/16/18*
- ✦ *"Importantly, are we able to address the unmet needs that continue to persist in the current robotic system? Firstly, reach and access, very important, multi-quadrant reach, being able to have the capability of reaching every part of the anatomy. We're going to deliver that." – M. del Prado 5/16/18*
- ✦ *"We recently successfully completed a series of end-to-end procedures, engaging a group of global KOLs across a subset of target specialties, including general and with hernia, colorectal and bariatrics, in gynecologic, and thoracic surgery." – P. Stoffels 7/17/19*

Source: JNJ 2014 Investor Day, JNJ 2016 Investor Day, JNJ 2018 Investor Day, 2018 Citi Healthcare Conference, JNJ 2Q19 Earnings Call

AURIS ACQUISITION

In January 2019, Verb CEO Scott Huennikens left the company. Less than two months later, JNJ announced the acquisition of Auris Health for \$3.4B (with additional milestone-based payments up to \$2.35B) on February 13, 2019 (see our initial reaction [here](#)). The \$3.4B upfront payment is largely about Auris's Monarch lung biopsy platform, but much of the contingent payment is based on milestones related to a pipeline of products beyond Monarch. Specifically, Auris has several patents related to the use of robotics in general surgery – see the [294 patent](#), the [371 patent](#), and Exhibit 16.

EXHIBIT 16: Image of "Surgical system with configurable rail-mounted mechanical arms" from Auris patent



Source: US Patent Office; US 2016/0296294

On JNJ's 1Q19 earnings call, management seemed to confirm the notion Auris IP could potentially be leveraged by either Verb or Orthotaxy at some point down the road. In our view, the Auris acquisition highlights management's desire to have a presence in robotics as soon as possible (and, potentially, management's dissatisfaction with the rate of progress at Verb under Mr. Huennekens). We also see the Auris acquisition as further validation that J&J management views surgical robotics as a foundational long-term growth driver.

Ultimately, Auris is expected to contribute to JNJ's broader digital surgery strategy alongside Verb, Orthotaxy, and several enabling technologies. In our discussions with the company, JNJ management has talked about Auris as separate, sitting alongside ongoing work at Verb and Orthotaxy. While management talks about their intention to "leave Auris alone, so they can do what they do best", they have also hinted at the idea that Auris technology could help improve the Verb platform in some meaningful ways. Longer-term, management envisions synergies across multiple robotics platforms, with additional synergies provided by some of the enabling technologies in which J&J has invested (e.g., Health Partner, C-SATS, SPI, etc.)

EXHIBIT 17: Auris is expected to contribute to JNJ's broader digital surgery strategy alongside Verb, Orthotaxy, and several enabling technologies

- ✦ "We're very pleased to welcome Auris to the J&J family. Just spent some time with them last week at close and to really welcome Dr. Fred Moll, who many of you know is a true pioneer in the field of robotics. And we view the acquisition of Auris as highly complementary to our Verb program as well as our Orthopedics program and Orthotaxy...We plan to take advantage of the world-class robotics expertise, advanced instrumentation, our partnership with Verily of creating a connected experience and then clearly, our very robust global infrastructure to have a very competitive value proposition in the field of digital surgery." – A. McEvoy 4/16/19
- ✦ "We view the Auris acquisition as highly complementary to our Verb program. I was at Verb just last week, and I'm very pleased with how they're knocking down risk every day. They have completed all preclinical, procedural developments for several procedures. They've engaged with hundreds of surgeons. They're engaging right now with notified bodies on the regulatory pathways so I would say, stay tuned. We're going to take the best insight from Dr. Fred Moll and really have him and assess both of these programs and make sure that we have a highly differentiated value proposition at launch." – A. McEvoy 4/16/19

Source: JNJ 1Q19 Earnings Call, JNJ 2Q19 Earnings Call

WHAT WE'RE HEARING FROM KEY OPINION LEADERS

Our ongoing discussions with key opinion leaders continue to validate the notion that customers are eager for competition in surgical robotics (Exhibit 18). Generally, surgeons and hospitals agree that competition is good for medical device markets. It keeps market participants honest, helps customers hold them accountable, stimulates innovation, and can lead to more favorable pricing.

In our experience, some surgeons are particularly receptive to competitive pitches. For all the surgeons who love Intuitive's technology and testify that the da Vinci has changed their lives for the better, there are others who feel snubbed by Intuitive. Perhaps they have sought speaking engagements that were never granted, or their custom instrument requests were ignored. The TransEnterix case is interesting. Buyers of the TransEnterix robots were eager to get out from "under the thumb" of Intuitive. But when they realized the technology was inferior, they quickly abandoned it for the devil they knew.

EXHIBIT 18: Surgeons and hospitals are thirsty for competition... but that doesn't necessarily mean that new entrants will be successful

✦ *"We were excited to buy a TransEnterix robot a couple years ago after suffering under the Intuitive monopoly for many years. We were excited to see a competitor, and the system looked promising. It has some nice features like the eye-catching camera. But it does not stack up to da Vinci – not even close. It's worse than lap, and now it's in storage."*

Source: Bernstein expert interviews

While surgeons and hospitals are excited by the prospect of competitive entry by MDT and JNJ, competition will need to be compelling in order to make a real difference. Surgeons do not like to change if they can avoid it, and they have invested a lot of effort in building skills on da Vinci.

Based on our recent discussions with KOLs, feedback regarding JNJ's general surgery robotic has been generally quite positive. Most experts believe that JNJ's robotic is superior to Medtronic's, and some believe that it could become a viable competitor to da Vinci in the long-run. In fact, several KOLs have gone so far as to call JNJ's robot a "game-changer". Unsurprisingly, it is JNJ's vision for "digital surgery"—of which robotics is just one component—that has key stakeholders most excited. However, there are also some aspects of the robot itself that surgeons find particularly compelling—most notably the heads-up, glasses-free, 3-D display screen.

EXHIBIT 19: Experts are generally impressed by JNJ's robotics platform, and most believe that JNJ's entry will be market expanding

- ✦ *"JNJ's prototype is highly sophisticated. The company has all the requisite skills and technology. I think it's going to be a major game changer."*
- ✦ *"JNJ's and Medtronic's entry will be market expanding. I expect we'll see an explosion of new procedures as the new systems roll out."*

Source: Bernstein expert interviews

EXHIBIT 20: Most experts agree that JNJ's long-term value proposition in robotics is tied to management's larger plan to digitize surgery

- ✦ *"What's going to be particularly intriguing is the AI and machine learning aspect [of JNJ's robotic platform]. Eventually, the robot will be able to recognize the anatomy and think like a surgeon. It will even be able to learn the procedure and perform certain steps automatically—with better outcomes than a surgeon. It's absolutely realistic to expect this to be the next big step in robotics."*

Source: Bernstein expert interviews

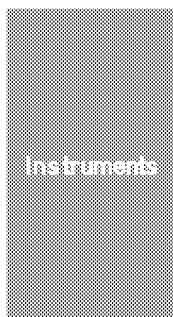
Below, we share a sampling of recent commentary we have heard on JNJ's tech and strategy in robotic surgery.

TECHNOLOGY: HARDWARE

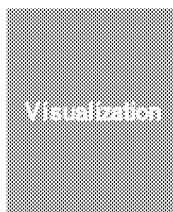
To reiterate, experts are particularly excited about JNJ's vision of a fully integrated "digital surgery" ecosystem. Importantly, however, most surgeons who have already used JNJ's robot are also impressed by the robot itself. Echoing our discussions with

experts about MDT's surgical robot, JNJ's emphasis on differentiated end effectors, visualization, and arm architecture all emerged as important themes (see Exhibit 21).

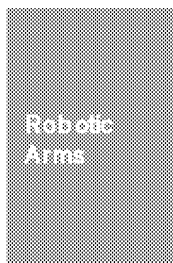
EXHIBIT 21: JNJ/Verb's robot scores high marks with KOLs, particularly for 1.) its differentiated 3-D display screen, and 2.) its smooth and precise controls (which appear to be superior to MDT's robot and on par with da Vinci's)



- ✦ "End effectors are a common element of JNJ's and MDT's value proposition. Both companies will use their robot as a platform to push their instruments."
- ✦ "Instruments are more of a core competency for JNJ than for ISRG. The da Vinci instrument portfolio is less than ideal. They have the old Harmonic shears, only one vessel sealer, limited advanced energy options, etc. The lack of advanced instrumentation has limited ISRG's penetration of more complex procedures."
- ✦ "Having wristed instruments is very important for a soft tissue robot. And JNJ is planning to develop wristed instruments for the robot. But developing adequate quality of the movement is quite challenging. Da Vinci has very precise, smooth, fine movements. It's totally exact. If you move just 0.5mm with your hands, the robot will move the same amount. The level of precision with JNJ's robot is very impressive. The movements with Medtronic's robot aren't as smooth."



- ✦ "JNJ's robot has a fantastic curved display screen, which provides a totally 3-D impression."
- ✦ "The heads up display means the surgeons can still look around the OR and communicate with their team. It's a really fantastic solution."
- ✦ "The Verb screen looks great. I've never seen this display technology before. Every pixel on the screen moves with your eyes. There is a small camera targeting your eyes, and pixels on screen change their position as you move. This enables continuous 3-D vision without glasses in an open console."



- ✦ "The robotic arms are very small, similar to the CMR robot and slimmer than da Vinci's arms—which allows the staff to easily access the patient and to communicate with each other in the OR."
- ✦ "In terms of patient access, JNJ's robot is comparable to da Vinci. Medtronic's robot has inferior accessibility, but it's still manageable."
- ✦ "The robotic arms are integrated into the table—they come out from under the table. It's an interesting solution, but may negatively impact the ability to reduce the time between patients. The arm architecture could be particularly problematic for European surgeons who have relatively fewer hours in the OR. But Verb is a well-managed company with a lot of resources. They'll come up with a solution."

Source: Bernstein expert interviews

While ISRG end effectors have improved considerably in recent years, da Vinci users still point to the company's instruments as a potential area of vulnerability. For the last two decades, ISRG's monopoly position has generally insulated the company from this relative weakness. In our view, it makes perfect sense for MDT and JNJ to draw the battle lines around the quality of their end effectors (an area where they have an advantage over ISRG) rather than around the quality of their robot per se (an area where ISRG has considerably more experience and know-how).

The logic of this end effector strategy notwithstanding, it will be far easier said than done for both MDT and JNJ. Retrofitting an instrument for robotic compatibility is considerably more involved than simply taking the end effector from a laparoscopic instrument and sticking it onto a robotic arm. In reality, instruments will need to be reengineered to be made fully wristed, since the vast majority of laparoscopic instruments are straight (i.e., not wristed).

Most notably, surgeons are very intrigued by JNJ's differentiated display screen. Like MDT and ISRG, JNJ's robot will have a 3-D display screen. However, unlike MDT, JNJ's 3-D technology does not require the use of 3-D glasses. And, unlike da Vinci, JNJ has designed a heads-up display that is less stressful on surgeons' eyes while also better enabling communication among team members in the OR. JNJ has employed a curved screen and eye-tracking technology to make this combination of features possible, and early feedback has been very positive.

With respect to the robotic arms, experts indicated that they will be attached to the bed and will "come out from under the bed." This is consistent with management commentary regarding plans to reduce the system's footprint relative to da Vinci. However, some European users expressed concern that the bed-mounted arm design could negatively impact their ability to optimize operating room utilization given pre- and post-procedure workflow differences between the U.S. and Europe.

In terms of the size, JNJ's robotic arms are substantially smaller than MDT's robot. Surgeons seem to appreciate the improved patient access that this design choice affords vs. MDT's robot, which is designed with each robotic arm mounted to its own standalone column/cart.

TECHNOLOGY: DIGITAL SURGERY

JNJ management aims to offer a compelling value proposition in robotics as part of a broader "digital surgery" platform—which refers to the integration of surgical robotics, supporting software, and a smart/interconnected operating room. Based on our recent expert interviews, we believe most surgeons are both excited and optimistic about JNJ's potential for success on this front. We are similarly intrigued by JNJ's strategy around digital surgery, and we agree that AI and informatics have the potential to improve patient outcomes beyond what robotics alone can achieve.

That said, we believe it is also important to acknowledge that JNJ will not be able to offer this capability immediately; JNJ will not be a meaningful competitive advantage until the company is able to collect (and analyze) a critical mass of relevant data. In effect, JNJ will be asking customers to sign up for a robot so that the process of data generation can begin in earnest.

EXHIBIT 22: Experts are intrigued by JNJ's vision of "digital surgery" and are encouraged by the Alphabet partnership, but they acknowledge that Intuitive is also investing in this area

- ✦ *"Intuitive has a very solid and robust working system [in da Vinci]. It's like a Mercedes: extremely reliable, extremely low malfunction rate, extremely intuitive and easy to use. In terms of engineering, da Vinci is really good. But like a Mercedes, it is hardware engineering. There is room for the next step in surgery, which is the data part of it. There hasn't been a lot of development pressure on Intuitive historically, and da Vinci doesn't help surgeons make decisions as well as it could. The market needs to move from Mercedes to Tesla. There is a big opportunity for a competitor to enter the robotic surgery market with a value proposition built around digital technologies."*
- ✦ *"JNJ has a very strong partner in Google. Google has experience generating data, experience with machine learning, and experience with AI. I suspect they'll start with relatively low hanging fruit. It can be simple stuff such as instrument utilization, feedback loops on relatively easy parameters—which instruments did you use? how long did it take?—metrics to increase OR efficiency, etc. Eventually, JNJ can go a long way in providing surgeons with data to improve their decision-making."*
- ✦ *"Both JNJ and Intuitive are headed in very similar directions with their digital strategies. I'm convinced it will be a game changer in surgery. Connecting procedural data to clinical outcomes is the big vision in the end. Right now, we are capturing no data, and the surgeons just writes up a short and biased report. We need to make the computer understand what's going on during surgery. Ethicon started that conversation, but Intuitive was smart and quickly jumped on. The real question is: 'Who has the best resources to execute on this vision? And who will be able to plug their robot into an entire software system?' That company will be the long-term winner."*

Source: Bernstein expert interviews

EXHIBIT 23: One theory is that JNJ's video feed technology will enable surgeons to compare intraoperative data across open, laparoscopic, and robotic procedures

- ✦ *"The digitization strategy is very much a core design element. JNJ recognizes that this isn't about robotics vs. laparoscopy vs. open [surgery]. Digital surgery is an umbrella for everything. That gives JNJ an advantage over ISRG in the digital game. The video feed is the common denominator connecting [the different modalities]. If you look at the video feed, that opens up minimally invasive and open surgery for digital analysis."*

Source: Bernstein expert interviews

Some experts we spoke to believe that JNJ may leverage its video technology – paired with AI-enabled technology akin to facial recognition capability – to generate intraoperative data (e.g., instrument tracking, instrument-tissue interaction, etc.) across robotic, laparoscopic, and open procedures (see Exhibit 23). This data would then be cross-referenced against patient outcomes to inform best practices, increase procedural replicability, and potentially offer intra-operative decision-making support.

With its Digital Surgery strategy, JNJ is betting that it can (1) find ways to collect meaningful data across robotic, lap and open procedures and (2) develop applications for those data that are compelling for hospitals and surgeons. Success here could change the basis for competition in the market and create an advantage over ISRG by leveraging JNJ's leadership in lap and open procedure volumes.

We expect JNJ's digital surgery platform to be rollout out in phases, starting with relatively low-hanging fruit (e.g., data collection on instrument utilization, operating time, clinical outcomes, etc.) and building towards more advanced capabilities. Eventually, some experts envision a world in which certain steps of a procedure are automated—though they acknowledge that this is still many years away from becoming a reality.

EXHIBIT 24: JNJ's "digital surgery" platform will likely start by collecting relatively simple data, but the end-game could include intra-operative decision support and even autonomous completion of certain steps

- ✦ *"The ultimate goal [with digital surgery] is to make surgery safer. Take the evolution of commercial aviation as an example. If you had asked a pilot 40 years ago whether autopilot technology was possible, they would have all said no. They would have pointed to the number of variables that must be accounted for in support of their answer. Many surgeons might say the same thing now. But surgery can be standardized and made safer in a similar way. Achieving partial automation will be the goal, but it's going to take a long time to get there."*

Source: Bernstein expert interviews

ECONOMICS & PROCEDURE FOCUS

While it's clear that JNJ intends to make per procedure economics an important part of its value proposition in robotic surgery, management has been significantly less clear about the details of the economic model than MDT. However, JNJ management has talked enough about price over the years to give key opinion leaders confidence that the company's robot will be less expensive than da Vinci. Experts also expect JNJ to compete with ISRG on instrument affordability. If JNJ is able to significantly extend the useful lives of its robotic instruments (i.e., if JNJ successfully disrupts ISRG's razor-razorblade model), then per-procedure cost could come down meaningfully.

EXHIBIT 25: Experts believe JNJ's economic strategy will combine a less expensive robot with instruments that have longer useful lives than da Vinci's

- ✦ *"JNJ's robot will be cheaper than da Vinci."*
- ✦ *"Intuitive's 10-use instrument life is unnecessary and arbitrary. And it presents a real opportunity [for JNJ and MDT]."*

Source: Bernstein expert interviews

JNJ is playing the long game in robotic surgery, and experts do not expect management to prioritize maximizing systems revenue in the near-term. Like MDT, JNJ is expected to leverage its surgical robot to lock-in end effector volume—rather than recovering as much as possible on the capital sale. Longer-term, experts believe that JNJ's real priority is collecting surgical information, which is consistent with management commentary around revolutionizing digital surgery.

EXHIBIT 26: Experts believe that JNJ is more focused on locking in end effector volume and collecting surgical information, rather than maximizing revenue from systems sales

- ✦ *"End effectors are a common element of JNJ's and MDT's value proposition. Both companies will use their robot as a platform to push their instruments."*
- ✦ *"JNJ isn't so keen on selling robots. They are much more interested in collecting surgical information and data. It's not so much about selling the product, but more about how to collect information."*

Source: Bernstein expert interviews

From a procedure standpoint, experts seemed to suggest JNJ would focus on more complex procedures initially. For example, one KOL called out "complex GI procedures: rectum, pancreas, esophagus."

TIMELINE

After the Auris acquisition in 1Q19, some investors worried that JNJ's launch date for the surgical robot might be pushed back. So far, JNJ has not moved off its 2020 commitment, and many of the experts we've spoken with believe the program remains on-track. Per our discussions with management and as noted above, we believe limited launch in early 2021 appears more likely at this point.

EXHIBIT 27: Experts believe that JNJ will adhere to its 2020 launch guidance, and do not believe the Auris acquisition will result in a delay

- ✦ *"I've already seen enough to have confidence [in the launch timeline]."*
- ✦ *"JNJ seems to be on a good path, and they're not moving the launch date. There is no indication that there is any problem with the hardware [that could delay the launch timeline]."*
- ✦ *"There is no indication that the Auris acquisition will delay JNJ's commercial timeline."*
- ✦ *"With each new robot [that comes to market], surgeons will have to reinvent each procedure. Most people—even [those] in the industry—don't understand this and often underestimate it. It will take a long time for both JNJ and MDT [to develop these procedures]. As soon as surgeons find a way to use the robots appropriately, we will be able to use them in a similar way to da Vinci for certain procedures. But only time will tell whether we will be able to perform complex procedures with these robots."*

Source: Bernstein expert interviews

SUMMARY VIEW FROM EXPERTS

In short, most experts agree that JNJ's robot is superior to Medtronic's, and some believe it approaches equal footing with Intuitive's da Vinci platform. The surgeons we interviewed are particularly intrigued by JNJ's "digital surgery" strategy, but they are also encouraged by the robot's design from a hardware perspective.

Specifically, JNJ's unique visualization solution (glasses-free, heads-up, 3-D display) could be an important source of differentiation during the initial phase of the robot's rollout—since the data required to execute on the "digital surgery" strategy will take a nontrivial amount of time to collect (to say nothing of the time needed to analyze the data and then integrate it into a continuous feedback loop to improve surgeon performance).

Despite the optimism around JNJ's robotics program, experts generally agree that Intuitive will continue to be a major player in the long-run. This outcome is not mutually exclusive with a successful entry by JNJ. There are room for multiple players in this market, and most surgeons believe that competitive entry will be market expanding.

EXHIBIT 28: Experts generally agree that Intuitive will continue to be a major player in the long-run, and they expect JNJ's entry to be market expanding

- ✦ *"Intuitive is being clever about placing as many systems as they can ahead of the competition, like the shift towards an operating lease model. Being the second system on the market [and not the third] is therefore important."*
- ✦ *"Intuitive is unlikely to deviate from their platform too much just to offer a cheaper version of da Vinci. A full redesign is doubtful. It's more likely that management invests the incremental dollars in data analytics capabilities."*
- ✦ *"We could see Intuitive partner with someone on data analytics, such as Apple or IBM Watson. Data analytics capabilities are hard to develop from the ground up, and Intuitive can't expect to compete with Google without outside help."*
- ✦ *"Intuitive's long-term market share is unclear, but there's no doubt they will continue to be a major player in this market. [Share shift] is going to be highly dependent on how good the new systems are. Substantial market segmentation is the most likely long-term outcome."*
- ✦ *"As the market grows, a lot of hospitals will probably have multiple robots. But it's unclear if surgeons will be able and/or willing to jump from one to another. Will this be like driving a car, where you can easily switch between different models, or more like flying a plane, where a pilot is licensed for one specific model? In the end, the offerings will likely be fairly similar, and it will largely come down to personal preference. Hospitals will probably end up with two systems, one for the central OR, and one for the outpatient setting."*

Source: Bernstein expert interviews

KEY TAKEAWAYS

In our recently published review of MDT's soft-tissue surgical robot (see [link](#)), we offered six key takeaways based on our review of management commentary and interviews with key opinion leaders, and we add three additional points here re: JNJ's robot. First, we recap takeaways we noted in our MDT note:

(1) Customers are eager to see competition in surgical robotics...

Many surgeons love da Vinci and believe the technology has improved their lives by offering a better way to do their jobs. Others resent the company for perceived monopolistic behavior over the years. Where surgeons agree is in the view that competition will be a good thing for the surgical robotics market. Hospital administrators and CFOs are even more eager to explore alternatives in hopes of gaining some negotiating leverage.

(2) ...but to make a difference, the competition needs to be compelling

Surgeons do not like change. If a surgical approach is creating good patient outcomes, it is very difficult to convince a surgeon to consider a new approach. Intuitive has spent 20 years working hard to drive adoption of robotic surgery. Over that time, the company has placed over 5,300 robots and trained over 44,000 surgeons on the da Vinci. And surgeons have invested significant time and energy to learn procedures and build skills on the platform, with over 6 million procedures performed to date and over 14,000 peer-reviewed papers published.

As much as surgeons may welcome an alternative to Intuitive, inertia will be an important barrier to switching. Given the time and energy surgeons have invested in building skills on da Vinci, many will resist considering a new, untested platform. And as much as administrators would love to drive costs down, they will struggle to convert ISRG programs to MDT programs without surgeon support. The new competition will have to be really compelling to make a difference. They will need to earn their right to compete.

(3) Competition will fundamentally change the surgical robotics market over time

Intuitive has held a monopoly position for the last two decades. MDT and JNJ are pouring resources into their programs. It's clear that competition is coming. Even if we are not bowled over by what we have heard about the MDT robot so far, we do believe MDT will find success – if not with all customers, certainly with some – and if not with its first-generation robot, certainly with

some iteration. When competition begins to break through, it will have an impact on Intuitive. Capital sales cycles may lengthen. Procedure growth rates may modulate in certain segments. There will be pressure on pricing.

(4) We believe MDT entry will be market-expanding

In our view, the bull case on ISRG is not dependent on maintaining the company's historic monopoly position. There is room for multiple participants in this market given that fewer than 5% of eligible procedures are currently penetrated by robotic surgery, coupled with the clear value proposition of the modality relative to both open surgery and other MIS techniques. We see this as an attractive growth market for many years to come.

Medtronic's robot seems likely to increase the range of procedures that can move from open and lap approaches to robotic approaches. As medtech markets mature, often we see competitors carve out certain niches, and we believe that's a likely outcome here.

(5) Don't forget, ISRG is not standing still

It's easy to get lost pondering all the possible ways in which Medtronic could have impact on Intuitive's business. But it's also important to remember that Intuitive has been in the war room for years contemplating scenarios and formulating responses.

Shifting capital placements to operating leases and usage-based deals, for example, has helped the company prepare for Medtronic's per-procedure pricing model. The SP launch helps Intuitive extend the distinctiveness of its 4th generation platform, moving the goalposts for MDT and JNJ. Intuitive has experimented with multiple system designs over the years – some speculate the company may have a slimmed-down, less expensive robot ready to fight Medtronic for lower-priced procedures and ASC business. Efforts in augmented reality and machine learning have the potential to strengthen the value of ISRG's installed base. And the company's clean balance sheet gives ISRG some flexibility to act quickly on various competitive responses.

(6) Whatever happens, it's going to take multiple years to materialize

Even if MDT's unveiling of its prototype in September makes legitimate competition to ISRG seem imminent, we are still multiple years away from full-fledged competition on a meaningful scale. Management has guided to commencement of the initial phase of the rollout to begin in FY20 (i.e., before 4/30/20), and most investors are expecting sometime in the first half of CY20. That MDT has opted to launch exclusively in OUS markets at this stage seemingly indicates that the company may have work to do to generate the quality and volume of clinical data needed for FDA approval.

We expect Medtronic to execute a controlled launch in 1H 2020 in select markets outside the U.S. to help validate the technology and begin to build clinical evidence. We anticipate a controlled U.S. launch will be staged at least 12-18 months post OUS launch. Given the time required to build out procedures, train surgeons, etc., we do not expect to see material revenue contribution for MDT until FY23 (2H CY22).

Having now spent some more time researching JNJ's general surgery robot, we add the following three additional takeaways:

(7) Experts are generally more excited by JNJ's robotic surgery platform than by MDT's

Experts generally believe that JNJ's robot is superior to Medtronic's from a tech perspective – at least, superior to the "v1" robot Medtronic is likely to have at launch – and some believe that it could eventually become a viable competitor to da Vinci. Multiple KOLs have gone so far as to call JNJ's robot a "game-changer".

While JNJ's vision of "digital surgery" is what excited surgeons most in the long-run, JNJ also has a differentiated design with respect to the robot itself. Most notably, surgeons are very intrigued by JNJ's differentiated display screen. Like MDT and ISRG, JNJ's robot will have a 3-D display screen. However, unlike MDT, JNJ's 3-D technology does not require the use of 3-D glasses. And, unlike da Vinci, JNJ has designed a heads-up display that is less stressful on surgeons' eyes while also better enabling communication among team members in the OR. JNJ has employed a curved screen and eye-tracking technology make this combination of features possible, and early feedback has been very positive.

(8) Being second to market might not be as advantageous as MDT hopes

We believe that there are some particularly loyal Medtronic/Covidien users who will want to test the MDT robot as soon as possible. These surgeons won't feel the need to wait around for JNJ's launch. But there are many users who are either more loyal

to JNJ Ethicon than to Covidien, or who are heavy users of both surgical tools vendors. For these surgeons, it might be worth it to wait and see just how exciting JNJ's platform is before making a decision to purchase a JNJ robot, a MDT robot, both, or neither.

MDT has made the strategic decision to incorporate a substantial number of off-the-shelf components into the robot's design with the intent to get market before JNJ. However, on the whole experts seem to be more excited about JNJ's robot, and we would expect a large portion of users to wait to see what both MDT and JNJ has before committing to one platform or the other.

(9) "Digital surgery" is exciting, and JNJ may have some differentiated capabilities—but it's not clear ISRG is behind

Commentary from JNJ management makes it clear that the company's value proposition in robotics will be part of a broader "digital surgery" platform. JNJ plans to "dramatically revolutionize surgery" by leveraging Alphabet's expertise in big data and AI to make surgery more predictable and more replicable—and ultimately to improve patient outcomes. We are intrigued by JNJ's vision of digital surgery, and strongly believe that incorporating AI and informatics at the pre- and post-op stage has the potential to improve patient outcomes beyond what robotics alone can achieve.

Our KOL interviews suggest that JNJ is developing some interesting capabilities on the digital front, but it is not clear that JNJ will have an advantage over Intuitive. JNJ does not yet have the data it needs to execute on its vision, and its digital capabilities will be quite limited until a critical mass of data has been collected. In effect, JNJ will be asking customers to sign up for a robot so that the process of data generation can begin in earnest. However, if JNJ management successfully finds a way to leverage the company's scale advantage over ISRG, that could potentially change the whole basis of competition in this market.

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APPENDIX - FINANCIAL FORECASTS

EXHIBIT 29: ISRG Financial Statements

Historical Financial Statements	2016	2017	2018	2019E	2020E	2021E	2022E	2023E
Instruments & Accessories	1,386	1,637	1,952	2,358	2,790	3,264	3,767	4,393
Systems	800	928	1,127	1,306	1,509	1,720	1,909	2,119
Services	511	573	635	721	810	907	1,015	1,137
Sales	2,707	3,138	3,724	4,385	5,108	5,891	6,711	7,649
COGS (adj)	768	881	1,062	1,274	1,535	1,823	2,118	2,452
Gross profit (adj)	1,938	2,257	2,663	3,111	3,573	4,067	4,594	5,197
SG&A (adj)	594	682	807	991	1,129	1,279	1,450	1,653
R&D (adj)	186	259	319	429	459	482	529	588
Operating income (adj)	1,158	1,316	1,537	1,691	1,985	2,307	2,614	2,957
Interest and other income, net	36	42	80	131	160	236	298	361
Earnings before taxes	1,194	1,358	1,618	1,822	2,145	2,543	2,912	3,318
Taxes (adj)	313	301	317	355	403	470	524	597
Net income (adj)	881	1,057	1,305	1,464	1,742	2,072	2,388	2,721
Diluted EPS (adj)	\$7.47	\$9.09	\$10.99	\$12.23	\$14.39	\$16.99	\$19.50	\$22.19
Avg Diluted Shares (M)	117.9	116.3	118.8	119.8	121.0	121.9	122.5	122.6
EBITDA (adj)	1,232	1,402	1,646	1,840	2,153	2,495	2,830	3,203

Growth Rates (YoY)	2016	2017	2018	2019E	2020E	2021E	2022E	2023E
Reported Growth								
Instruments & Accessories	16.5%	17.3%	19.9%	20.2%	18.3%	17.0%	16.0%	16.0%
Systems	10.8%	16.1%	21.4%	15.9%	15.5%	14.0%	11.0%	11.0%
Services	9.9%	12.2%	10.9%	13.5%	12.3%	12.0%	12.0%	12.0%
Total	13.5%	16.0%	18.7%	17.7%	16.5%	15.3%	13.9%	14.0%
EBITDA	21.9%	13.8%	17.4%	11.8%	17.0%	15.9%	13.5%	13.2%
EBIT (adj)	22.4%	13.6%	16.8%	10.0%	17.4%	16.2%	13.3%	13.1%
EPS (adj)	16.3%	21.6%	20.9%	11.3%	17.7%	18.1%	14.7%	13.8%

Key ratios	2016	2017	2018	2019E	2020E	2021E	2022E	2023E
Gross margin	71.6%	71.9%	71.5%	70.9%	69.9%	69.0%	68.4%	67.9%
SG&A	22.0%	21.7%	21.7%	22.6%	22.1%	21.7%	21.6%	21.6%
R&D	6.9%	8.3%	8.6%	9.8%	9.0%	8.2%	7.9%	7.7%
EBITDA	45.5%	44.7%	44.2%	42.0%	42.1%	42.3%	42.2%	41.9%
Operating margin (adj)	42.8%	41.9%	41.3%	38.6%	38.9%	39.2%	39.0%	38.7%
Incremental adj. operating margin	65.9%	36.6%	37.8%	23.2%	40.7%	41.1%	37.5%	36.5%
Tax rate, % EBT	26.2%	22.2%	19.6%	19.5%	18.8%	18.5%	18.0%	18.0%
Net income (adj)	32.6%	33.7%	35.0%	33.4%	34.1%	35.2%	35.6%	35.6%

Cash Flow	2016	2017	2018	2019E	2020E	2021E	2022E	2023E
FCF	989	953	982	1,260	1,776	2,206	2,399	2,740
FCF, % sales	37%	30%	26%	29%	35%	37%	36%	36%
FCF:Adj. NI	112%	90%	75%	86%	102%	106%	100%	101%
FCF/share	\$8.39	\$8.20	\$8.27	\$10.52	\$14.68	\$18.09	\$19.58	\$22.35
Cash from Operations	1,043	1,144	1,170	1,625	2,079	2,552	2,812	3,198
Cash from Investing	(1,279)	379	(1,050)	(627)	(303)	(346)	(413)	(458)
Cash from Financing	559	(1,913)	126	(107)	(289)	(561)	(910)	(1,371)
Change in cash	322	(391)	246	892	1,487	1,645	1,489	1,369
Capex	(54)	(191)	(187)	(292)	(303)	(346)	(413)	(458)
Buy backs	(43)	(2,274)	0	(200)	(493)	(745)	(1,075)	(1,520)

Balance Sheet	2016	2017	2018	2019E	2020E	2021E	2022E	2023E
Total Assets	6,487	5,758	7,847	9,559	11,395	13,360	15,352	17,277
Current Assets	3,250	2,811	4,333	5,094	6,815	8,641	10,454	12,188
LT Assets	3,237	2,947	3,514	4,465	4,580	4,719	4,898	5,089
Book Value of Equity	5,778	4,727	6,888	8,330	10,144	12,079	14,044	15,942
Total Liabilities	709	1,031	1,159	1,229	1,251	1,281	1,307	1,335
Cash	1,037	648	858	1,712	3,199	4,844	6,333	7,701
Total Debt	0	0	0	0	0	0	0	0
Net Debt (cash)	(1,037)	(648)	(858)	(1,712)	(3,199)	(4,844)	(6,333)	(7,701)
Net Debt (cash): EBITDA	-0.8x	-0.5x	-0.5x	-0.9x	-1.5x	-1.9x	-2.2x	-2.4x
Total Debt (cash): EBITDA	0.0x	0.0x	0.0x	0.0x	0.0x	0.0x	0.0x	0.0x
NOPAT (All in)	855	1,024	1,237	1,361	1,612	1,880	2,144	2,425
ROIC (All in)	15.9%	17.9%	19.5%	16.4%	15.8%	15.6%	15.3%	15.2%
ROIC (Tangible)	16.9%	19.0%	21.0%	17.6%	16.8%	16.4%	15.9%	15.7%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
480	478	486	539	552	579	581	646
235	277	275	341	248	344	315	400
153	156	160	167	174	177	181	189
848	909	921	1,047	974	1,099	1,078	1,235
241	263	263	295	281	315	316	362
607	646	658	751	693	784	762	873
188	185	187	247	231	233	232	296
73	73	81	92	100	95	109	125
346	389	391	412	362	455	421	453
13	18	22	27	28	33	32	40
360	407	413	439	389	488	453	492
72	80	76	88	77	98	84	96
288	327	337	353	312	388	369	396
\$2.44	\$2.76	\$2.83	\$2.96	\$2.61	\$3.25	\$3.08	\$3.29
118.0	118.5	119.2	119.2	119.6	119.3	119.8	120.3
370	415	418	444	393	492	460	495

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
20.9%	19.7%	21.2%	18.0%	20.0%	21.5%	19.5%	19.8%
45.8%	25.5%	4.8%	19.7%	5.5%	23.9%	14.8%	17.4%
10.7%	11.4%	10.7%	10.8%	13.9%	13.4%	13.4%	13.4%
24.7%	19.8%	14.0%	17.3%	14.9%	20.9%	17.0%	18.0%
29.9%	23.6%	12.6%	8.0%	6.2%	18.5%	10.3%	11.7%
30.3%	23.4%	11.9%	6.7%	4.4%	17.1%	7.9%	9.9%
42.8%	36.4%	1.6%	14.1%	7.1%	17.6%	8.8%	11.1%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
71.6%	71.1%	71.5%	71.8%	71.2%	71.3%	70.7%	70.7%
22.2%	20.3%	20.3%	23.6%	23.7%	21.2%	21.5%	23.9%
8.6%	8.0%	8.8%	8.8%	10.3%	8.7%	10.1%	10.1%
43.7%	45.6%	45.3%	42.4%	40.4%	44.7%	42.7%	40.1%
40.9%	42.7%	42.4%	39.4%	37.1%	41.4%	39.1%	36.7%
47.9%	49.0%	36.7%	16.6%	12.0%	35.1%	19.6%	21.6%
20.1%	19.7%	18.5%	20.0%	19.8%	20.0%	18.6%	19.5%
33.9%	36.0%	36.6%	33.8%	32.0%	35.3%	34.2%	32.1%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
240	187	273	283	218	234	508	299
28%	21%	30%	27%	22%	21%	47%	24%
84%	57%	81%	80%	70%	60%	138%	76%
\$2.03	\$1.58	\$2.29	\$2.37	\$1.83	\$1.96	\$4.24	\$2.49
280	232	320	338	333	316	558	345
54	(44)	(573)	(486)	(309)	(223)	(49)	(46)
(8)	43	58	34	(42)	(179)	57	57
326	230	(195)	(115)	(18)	(85)	565	356
(40)	(45)	(47)	(56)	(115)	(82)	(49)	(46)
0	0	0	0	0	(200)	0	0

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
6,426	6,850	7,319	7,847	8,235	8,532	9,007	9,559
3,382	3,986	4,253	4,333	4,025	4,072	4,542	5,094
3,045	2,864	3,066	3,514	4,210	4,460	4,465	4,465
5,506	5,869	6,289	6,688	7,040	7,280	7,785	8,330
920	980	1,030	1,159	1,195	1,252	1,222	1,229
975	1,204	1,008	858	876	790	1,356	1,712
(975)	(1,204)	(1,008)	(858)	(876)	(790)	(1,356)	(1,712)
0.7x	0.7x	0.6x	0.5x	0.6x	0.4x	0.7x	0.9x
0.0x	0.0x	0.0x	0.0x	0.0x	0.0x	0.0x	0.0x
277	312	318	329	290	364	343	364
19.3%	19.9%	19.1%	18.5%	15.3%	18.4%	17.4%	17.4%

Source: Company reports; Bernstein estimates & analysis

EXHIBIT 30: JNJ Financial Statements

Adjusted Income	2017	2018	2019E	2020E	2021E	2022E	2023E
Consumer	13,602	13,853	13,958	14,383	14,848	15,320	15,808
MD&D	26,592	26,994	25,708	26,451	27,506	28,631	29,831
Pharma	36,256	40,734	42,005	44,879	47,496	48,064	49,498
Sales (adj)	76,450	81,581	81,671	85,713	89,850	92,015	95,137
COGS (adj)	21,729	22,521	22,991	23,983	24,941	25,451	26,220
Gross profit (adj)	54,721	59,060	58,681	61,750	64,909	66,564	68,916
SG&A (adj)	21,420	22,540	21,935	22,726	23,420	23,893	24,610
R&D (adj)	10,554	10,775	11,210	11,421	11,703	11,894	12,202
Operating income (adj)	22,747	25,745	25,536	27,603	29,786	30,777	32,104
Interest expense (adj)	549	394	50	264	178	195	186
Other expense (income) (adj)	-2,015	-1,347	-2,751	-1,800	-1,400	-1,300	-1,200
Earnings before taxes (adj)	24,212	26,698	28,237	29,139	31,008	31,881	33,118
Taxes (adj)	4,172	4,383	5,084	4,808	5,116	5,260	5,464
Net income (adj)	20,040	22,315	23,153	24,331	25,891	26,621	27,654
Diluted EPS (adj)	\$7.30	\$8.18	\$8.62	\$9.16	\$9.79	\$10.11	\$10.55
Avg Diluted Shares (M)	2,745.3	2,728.7	2,685.6	2,654.9	2,643.8	2,632.2	2,620.7
EBITDA	25,426	28,317	28,435	31,566	34,673	36,564	38,637

Growth Rates (YoY)	2017	2018	2019E	2020E	2021E	2022E	2023E
Organic							
Consumer	-0.5%	3.2%	1.7%	3.1%	3.2%	3.2%	3.2%
MD&D	1.5%	2.6%	3.1%	3.9%	4.0%	4.1%	4.2%
Pharma	4.2%	8.4%	5.1%	6.9%	5.8%	1.2%	3.0%
Total	2.4%	5.5%	3.9%	5.3%	4.8%	2.4%	3.4%
Currency	0.4%	0.3%	-2.0%	0.0%	0.0%	0.0%	0.0%
M&A	3.6%	0.9%	-1.8%	-0.3%	0.0%	0.0%	0.0%
Reported Growth	6.3%	6.7%	0.1%	4.9%	4.8%	2.4%	3.4%
EBITDA	0.2%	11.4%	0.4%	11.0%	9.8%	5.5%	5.7%
Operating Income (adj)	-0.7%	13.2%	-0.8%	8.1%	7.9%	3.3%	4.3%
EPS (adj)	8.5%	12.0%	5.4%	6.3%	6.9%	3.3%	4.3%

Key Ratios	2017	2018	2019E	2020E	2021E	2022E	2023E
Gross margin	71.6%	72.4%	71.8%	72.0%	72.2%	72.3%	72.4%
SG&A	28.0%	27.6%	26.9%	26.5%	26.1%	26.0%	25.9%
R&D	13.8%	13.2%	13.7%	13.3%	13.0%	12.9%	12.8%
EBITDA	33.3%	34.7%	34.8%	36.8%	38.6%	39.7%	40.6%
Operating margin (adj)	29.8%	31.6%	31.3%	32.2%	33.2%	33.4%	33.7%
Tax rate, % EBT	17.2%	16.4%	18.0%	16.5%	16.5%	16.5%	16.5%
Net income (adj)	26.2%	27.4%	28.3%	28.4%	28.8%	28.9%	29.1%

Cash Flow	2017	2018	2019E	2020E	2021E	2022E	2023E
FCF	17,777	18,531	20,297	29,633	32,153	33,919	35,716
FCF, % sales	23%	23%	25%	35%	36%	37%	38%
FCF: Adj. NI	89%	83%	88%	122%	124%	127%	129%
FCF/share	\$6.48	\$6.79	\$7.56	\$11.16	\$12.16	\$12.89	\$13.63

Cash from Operations	21,056	22,201	23,584	33,407	36,151	37,991	39,930
Cash from Investing	(14,868)	(3,167)	(10,327)	(10,506)	(10,730)	(10,804)	(10,946)
Cash from Financing	(7,673)	(18,510)	(17,919)	(18,899)	(14,715)	(14,688)	(14,538)
Change in cash	(1,148)	283	(4,662)	4,002	10,706	12,499	14,446

Capex	(3,279)	(3,670)	(3,595)	(3,774)	(3,998)	(4,072)	(4,214)
Acquisitions, net	(35,151)	(899)	(6,732)	(6,732)	(6,732)	(6,732)	(6,732)
Buy backs	(6,358)	(5,868)	(8,824)	(9,415)	(5,380)	(5,380)	(5,380)

Balance Sheet	2017	2018	2019E	2020E	2021E	2022E	2023E
Total Assets	157,303	152,954	148,945	156,418	169,517	182,684	197,700
Current Assets	43,088	46,033	38,428	43,868	55,853	69,044	84,453
LT Assets	114,215	106,921	110,517	112,550	113,665	113,840	113,248
Book Value of Equity	60,160	59,752	63,597	69,797	81,769	94,525	108,489
Total Liabilities	97,143	93,202	85,348	86,620	87,748	88,359	89,212
Cash + Marketable Securities	18,296	19,687	14,286	18,288	28,994	41,493	55,939
Total Debt	34,581	30,460	29,368	29,368	29,368	29,368	29,368
Net Debt	16,285	10,793	15,082	11,080	374	(12,125)	(26,571)
Net Debt/EBITDA	0.6x	0.4x	0.5x	0.4x	0.0x	-0.3x	-0.7x
Total Debt/EBITDA	1.4x	1.1x	1.0x	0.9x	0.8x	0.8x	0.8x
NOPAT (All in)	18,827	21,518	20,937	23,049	24,871	25,699	26,807
ROIC (All in)	20%	20%	19%	20%	21%	22%	23%
ROIC (Tangible)	68%	80%	65%	56%	52%	48%	46%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
3,398	3,504	3,415	3,536	3,318	3,544	3,463	3,634
6,767	6,972	6,587	6,668	6,458	6,491	6,141	6,618
9,844	10,354	10,346	10,190	10,244	10,529	10,497	10,735
20,009	20,830	20,348	20,394	20,020	20,564	20,101	20,987
5,416	5,768	5,481	5,856	5,462	5,784	5,656	6,089
14,593	15,062	14,867	14,538	14,558	14,780	14,445	14,898
5,263	5,743	5,543	5,991	5,219	5,546	5,214	5,955
2,404	2,639	2,508	3,224	2,858	2,666	2,578	3,108
6,926	6,680	6,816	5,323	6,481	6,568	6,653	5,834
145	127	68	54	3	-5	37	15
-77	-461	-32	-777	-388	-2,043	-160	-160
6,858	7,014	6,780	6,046	6,866	8,616	6,776	5,979
1,223	1,296	1,190	674	1,206	1,664	1,287	927
5,635	5,718	5,590	5,372	5,660	6,952	5,488	5,053
\$2.06	\$2.10	\$2.05	\$1.97	\$2.10	\$2.58	\$2.05	\$1.89
2,731.9	2,721.3	2,727.6	2,724.0	2,698.8	2,691.7	2,680.5	2,671.2
7,557	7,313	7,462	5,985	7,112	7,217	7,370	6,736

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
2.0%	0.9%	6.1%	3.8%	0.7%	2.3%	1.7%	2.2%
1.1%	2.9%	2.9%	3.3%	4.3%	3.2%	2.1%	2.8%
7.5%	11.0%	8.2%	7.2%	7.9%	4.4%	2.7%	5.6%
4.3%	6.3%	6.1%	5.3%	5.5%	3.7%	2.3%	4.1%
4.2%	1.9%	-1.9%	-2.3%	-3.9%	-2.9%	-1.0%	-0.2%
4.1%	2.4%	-0.6%	-2.0%	-1.6%	-2.1%	-2.5%	-1.0%
12.6%	10.6%	3.6%	1.0%	0.1%	-1.3%	-1.2%	2.9%
16.1%	9.0%	9.4%	11.2%	-5.9%	-1.3%	-1.2%	12.6%
16.9%	10.6%	10.2%	15.9%	-6.4%	-1.7%	-2.4%	9.6%
12.8%	14.5%	8.0%	13.1%	1.7%	22.9%	-0.1%	-4.1%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
72.9%	72.3%	73.1%	71.3%	72.7%	71.9%	71.9%	71.0%
26.3%	27.6%	27.2%	29.4%	26.1%	27.0%	25.9%	28.4%
12.0%	12.7%	12.3%	15.8%	14.3%	13.0%	12.8%	14.8%
37.8%	35.1%	36.7%	29.3%	35.3%	35.1%	36.7%	32.1%
34.6%	32.1%	33.5%	26.1%	32.4%	31.9%	33.1%	27.8%
17.8%	18.5%	17.6%	11.1%	17.6%	19.3%	19.0%	15.5%
28.2%	27.5%	27.5%	26.3%	28.3%	33.8%	27.3%	24.1%

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
2,948	5,204	5,453	4,926	2,887	4,829	6,686	5,895
15%	25%	27%	24%	14%	23%	33%	28%
52%	91%	98%	92%	51%	69%	122%	117%
\$1.08	\$1.91	\$2.00	\$1.81	\$1.07	\$1.79	\$2.49	\$2.21

3,606	6,079	6,272	6,244	3,543	5,648	7,502	7,199
(925)	(201)	(4,269)	2,228	(1,417)	(2,502)	(2,499)	(2,987)
(5,970)	(2,674)	(3,477)	(6,389)	(5,516)	(4,528)	(4,521)	(4,362)
(3,185)	2,930	(1,513)	2,051	(3,373)	(1,382)	482	(150)

(658)	(875)	(819)	(1,318)	(656)	(819)	(816)	(1,304)
(82)	(140)	(675)	(2)	(1,683)	(1,683)	(1,683)	(1,683)
(1,444)	(145)	(471)	(3,808)	(2,206)	(2,206)	(2,206)	(2,206)

1Q 18	2Q 18	3Q 18	4Q 18	1Q 19	2Q 19	3Q 19E	4Q 19E
156,625	155,365	155,703	152,954	150,027	146,221	146,903	148,945
42,768	45,438	47,194	46,033	41,987	37,410	37,367	38,428
113,857	109,927	108,509	106,921	108,040	108,811	109,536	110,517
63,255	62,889	64,626	59,752	58,955	61,565	62,715	63,597
93,370	92,476	91,077	93,202	91,072	84,656	84,187	85,348
15,204	18,139	19,364	19,687	15,336	13,954	14,436	14,286
32,533	32,083	31,253	30,480	29,368	29,368	29,368	29,368
17,329	13,944	11,889	10,793	14,032	15,414	14,932	15,082
0.6x	0.5x	0.4x	0.5x	0.5x	0.5x	0.5x	0.6x
1.1x	1.1x	1.0x	1.3x	1.0x	1.0x	1.0x	1.1x

Source: Company reports; Bernstein estimates & analysis

EXHIBIT 31: MDT Financial Statements

Adjusted Income	2017	2018	2019	2020E	2021E	2022E	2023E	2024E
Cardiac & Vascular	10,498	11,354	11,505	11,691	12,188	12,688	13,188	13,709
Minimally Invasive Therapies	9,919	8,716	8,478	8,794	9,178	9,547	9,932	10,333
Restorative Therapies	7,366	7,743	8,183	8,512	8,916	9,278	9,631	9,966
Diabetes	1,927	2,140	2,391	2,521	2,697	2,886	3,088	3,305
Sales (adj)	29,710	29,953	30,557	31,518	32,980	34,399	35,839	37,312
COGS (adj)	9,233	8,982	9,057	9,613	10,042	10,457	10,877	11,305
Gross profit (adj)	20,477	20,971	21,500	21,905	22,938	23,942	24,962	26,007
R&D	2,193	2,256	2,330	2,337	2,380	2,448	2,514	2,580
SG&A	9,711	9,947	10,157	10,230	10,606	11,011	11,436	11,868
Other operating expense, net	222	444	141	56	99	82	96	95
Operating income (adj)	8,351	8,324	8,872	9,282	9,853	10,402	10,916	11,464
Other non-operating (inc) expense	-425	-311	-377	-425	-555	-689	-827	-827
Net interest expense	728	1,108	959	722	709	709	709	709
Earnings before taxes (adj)	7,623	7,641	8,223	8,938	9,569	10,248	10,896	11,581
Taxes (adj)	1,229	1,108	1,133	1,431	1,483	1,558	1,634	1,737
Net income (adj)	6,394	6,533	7,089	7,507	8,086	8,690	9,262	9,844
Diluted EPS (adj)	\$4.60	\$4.77	\$5.22	\$5.58	\$6.11	\$6.71	\$7.31	\$7.95
Avg Diluted Shares (M)	1,391	1,368	1,358	1,346	1,322	1,294	1,266	1,238
EBITDA	9,288	9,145	9,767	10,176	10,807	11,398	11,966	12,562

Growth Rates (%)	2017	2018	2019	2020E	2021E	2022E	2023E	2024E
Organic Growth								
Cardiac & Vascular	3.0%	6.0%	2.9%	2.7%	4.2%	4.1%	3.9%	3.9%
Minimally Invasive Therapies	4.0%	4.0%	5.8%	5.0%	4.4%	4.0%	4.0%	4.0%
Restorative Therapies	2.0%	4.0%	6.6%	4.7%	4.8%	4.1%	3.8%	3.5%
Diabetes	4.0%	9.0%	13.4%	6.4%	7.0%	7.0%	7.0%	7.0%
Total Organic Growth	3.0%	5.0%	5.5%	4.1%	4.6%	4.3%	4.2%	4.1%
FX	-0.1%	1.7%	-1.5%	-1.0%	0.0%	0.0%	0.0%	0.0%
M&A	0.2%	-5.8%	-2.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Reported Growth	3.0%	0.8%	2.0%	3.1%	4.6%	4.3%	4.2%	4.1%
EBITDA	3.0%	-1.5%	6.8%	4.2%	6.2%	5.5%	5.0%	5.0%
EBIT (adj)	2.8%	-0.3%	6.6%	4.6%	6.2%	5.6%	4.9%	5.0%
EPS (adj)	5.2%	3.9%	9.4%	6.8%	9.6%	9.8%	8.9%	8.7%

Key Ratios	2017	2018	2019	2020E	2021E	2022E	2023E	2024E
Gross margin	68.8%	70.0%	70.4%	69.5%	69.6%	69.6%	69.7%	69.7%
SG&A	32.7%	33.2%	33.2%	32.5%	32.2%	32.0%	31.9%	31.8%
R&D	7.4%	7.5%	7.6%	7.4%	7.2%	7.1%	7.0%	6.9%
EBITDA	31.3%	30.5%	32.0%	32.3%	32.8%	33.1%	33.4%	33.7%
Operating margin (adj)	28.1%	27.8%	29.0%	29.5%	29.9%	30.2%	30.5%	30.7%
Incremental adj. operating margin	25.5%	-11.1%	90.7%	42.7%	39.1%	38.6%	35.7%	37.2%
Tax rate, % EBT	16.1%	14.5%	13.8%	16.0%	15.5%	15.2%	15.0%	15.0%
Net income (adj)	21.5%	21.8%	23.2%	23.8%	24.5%	25.3%	25.8%	26.4%

Cash Flow	2017	2018	2019	2020E	2021E	2022E	2023E	2024E
FCF	5,626	3,618	5,873	6,938	8,294	8,958	9,487	10,108
FCF, % sales	19%	12%	19%	22%	25%	26%	26%	27%
FCF:Adj. NI	88%	55%	83%	92%	102%	103%	103%	103%
FCF/share	\$4.04	\$2.64	\$4.33	\$5.15	\$6.25	\$6.92	\$7.50	\$8.16
Cash from Operations	6,880	4,684	7,007	8,097	9,476	10,214	10,811	11,474
Cash from Investing	(1,571)	5,858	(774)	(1,409)	(1,212)	(1,258)	(1,314)	(1,366)
Cash from Financing	(3,283)	(11,954)	(5,431)	(3,016)	(4,963)	(5,447)	(5,869)	(6,349)
Change in cash	2,091	(1,298)	724	3,674	3,301	3,509	3,628	3,759
Capex	(1,254)	(1,068)	(1,134)	(1,159)	(1,212)	(1,258)	(1,314)	(1,366)
Acquisitions, net	(1,324)	(137)	(1,827)	(145)	0	0	0	0
Buy backs	(3,544)	(2,171)	(2,877)	(1,446)	(2,782)	(3,012)	(3,260)	(3,529)

Balance Sheet	2017	2018	2019	2020E	2021E	2022E	2023E	2024E
Total Assets	99,816	91,393	89,694	94,939	99,043	105,234	107,614	112,108
Current Assets	24,873	22,980	21,967	27,545	33,169	38,884	44,782	50,793
LT Assets	74,943	68,413	67,727	67,395	65,874	64,350	62,832	61,315
Book Value of Equity	50,416	50,822	50,212	53,787	57,223	60,782	64,525	68,375
Total Liabilities	49,400	40,571	39,482	41,152	41,820	42,442	43,089	43,733
Cash + Marketable Securities	13,708	11,227	9,848	15,014	20,093	25,388	30,799	36,342
Total Debt	33,441	25,757	25,324	26,262	26,262	26,262	26,262	26,282
Net Debt	19,733	14,530	15,478	11,248	6,169	874	(4,537)	(10,080)
Net Debt:EBITDA	2.1x	1.6x	1.6x	1.1x	0.6x	0.1x	-0.4x	-0.8x
Total Debt:EBITDA	3.6x	2.8x	2.6x	2.6x	2.4x	2.3x	2.2x	2.1x
NOPAT (All in)	4,471	5,687	6,128	6,290	6,823	7,306	7,763	8,228
ROIC (All in)	5.6%	7.5%	8.5%	8.7%	9.5%	10.4%	11.3%	12.2%
ROIC (Tangible)	25.6%	52.3%	52.4%	47.3%	49.5%	51.7%	53.3%	55.0%

Q1 19	Q2 19	Q3 19	Q4 19	Q1 20	Q2 20E	Q3 20E	Q4 20E
2,811	2,858	2,786	3,050	2,790	2,867	2,869	3,165
2,052	2,047	2,124	2,255	2,100	2,127	2,212	2,355
1,949	1,993	2,026	2,215	2,012	2,071	2,110	2,318
572	583	610	626	592	593	656	679
7,384	7,481	7,546	8,146	7,494	7,659	7,847	8,518
2,187	2,179	2,243	2,448	2,328	2,315	2,380	2,590
5,197	5,302	5,303	5,698	5,166	5,344	5,468	5,928
585	590	561	594	582	583	568	604
2,538	2,554	2,500	2,565	2,485	2,561	2,553	2,631
60	73	38	-30	-18	25	24	26
2,014	2,085	2,204	2,569	2,117	2,175	2,324	2,668
-76	-77	-64	-94	-102	-95	-85	-95
242	241	243	233	196	175	175	175
1,847	1,921	2,025	2,430	2,023	2,095	2,234	2,587
245	261	274	353	319	340	357	414
1,601	1,660	1,751	2,077	1,704	1,754	1,876	2,173
\$1.17	\$1.22	\$1.29	\$1.54	\$1.26	\$1.30	\$1.40	\$1.62
1,365	1,361	1,353	1,351	1,352	1,348	1,344	1,340
2,234	2,291	2,443	2,799	2,327	2,398	2,554	2,898

Q1 19	Q2 19	Q3 19	Q4 19	Q1 20	Q2 20E	Q3 20E	Q4 20E
5.0%	4.4%	1.6%	1.1%	1.4%	1.4%	3.6%	4.3%
4.9%	6.8%	6.6%	5.1%	4.8%	5.2%	4.9%	5.0%
6.8%	7.8%	5.5%	6.5%	4.6%	4.6%	4.5%	5.0%
26.3%	27.5%	6.5%	0.6%	5.4%	2.8%	8.0%	9.0%
6.8%	7.5%	4.4%	3.6%	3.5%	3.4%	4.5%	5.0%
1.1%	-1.3%	-2.0%	-3.5%	-2.0%	-1.0%	-0.5%	-0.5%
-7.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
-0.1%	6.1%	2.4%	0.0%	1.5%	2.4%	4.0%	4.6%
4.7%	9.5%	8.5%	4.9%	4.2%	4.7%	4.5%	3.5%
3.2%	11.3%	7.7%	4.8%	5.1%	4.3%	5.4%	3.8%
4.7%	14.4%	10.0%	8.2%	7.5%	6.7%	7.9%	5.5%

Q1 19	Q2 19	Q3 19	Q4 19	Q1 20	Q2 20E	Q3 20E	Q4 20E
70.4%	70.9%	70.3%	69.9%	68.9%	69.9%	69.7%	69.6%
34.4%	34.1%	33.1%	31.5%	33.2%	33.4%	32.5%	30.9%
7.9%	7.9%	7.4%	7.3%	7.8%	7.6%	7.2%	7.1%
30.2%	30.6%	32.4%	34.4%	31.0%	31.3%	32.5%	34.0%
27.3%	27.9%	29.2%	31.5%	28.2%	28.4%	29.6%	31.3%
-104.3%	49.0%	88.7%	585.0%	94%	50.4%	39.7%	26.5%
13.3%	13.8%	13.5%	14.5%	15.8%	16.3%	16.0%	16.0%
21.7%	22.2%	23.2%	25.5%	22.7%	22.9%	23.9%	25.5%

Q1 19	Q2 19	Q3 19	Q4 19	Q1 20	Q2 20E	Q3 20E	Q4 20E
1,411	957	1,753	1,752	1,208	1,608	1,656	2,286
19%	13%	23%	22%	16%	21%	23%	27%
88%	58%	100%	84%	71%	92%	98%	105%
\$1.03	\$0.70	\$1.30	\$1.30	\$0.89	\$1.19	\$1.37	\$1.71
1,702	1,163	2,055	2,087	1,510	1,848	2,126	2,614
643	121	(1,009)	(529)	(551)	(239)	(291)	(328)
(1,573)	(1,730)	(1,268)	(860)	(274)	(907)	(914)	(921)
711	(469)	(208)	690	687	702	921	1,365
(291)	(206)	(302)	(335)	(301)	(239)	(291)	(328)
(104)	(15)	(1,496)	(212)	(145)	0	0	0
(824)	(1,223)	(681)	(149)	(333)	(384)	(371)	(378)

Q1 19	Q2 19	Q3 19	Q4 19	Q1 20	Q2 20E	Q3 20E	Q4 20E
89,721	88,150	88,730	89,694	91,268	92,109	93,254	94,939
22,460	21,653	20,877	21,967	22,705	23,982	25,515	27,545
67,261	66,497	67,853	67,727	68,563	68,127	67,739	67,395
50,329	49,714	49,941	50,212	50,487	51,417	52,454	53,787
39,392	38,436	38,789	39,482	40,771	40,692	40,800	41,152
11,004	10,133	9,142	9,848	10,883	11,837	13,206	15,014
25,223	25,016	25,030	25,324	26,262	26,262	26,262	26,282
14,219	14,883	15,888	15,476	15,579	14,425	13,056	11,248
1.6x	1.6x	1.6x	1.4x	1.7x	1.5x	1.3x	1.0x
2.8x	2.7x	2.6x	2.3x	2.8x	2.7x	2.6x	2.3x

Source: Company reports, Bernstein estimates & analysis

DISCLOSURE APPENDIX

TICKER TABLE

Ticker	Rating		5 Sep 2019	Target	TTM		EPS Reported			P/E Reported		
			Closing Price				2018A	2019E	2020E	2018A	2019E	2020E
ISRG	O	USD	508.17	635.00	(8.3)%	USD	10.99	12.23	14.39	46.26	41.56	35.32
JNJ	M	USD	128.58	148.00	(8.4)%	USD	8.18	8.62	9.16	15.72	14.91	14.03
MDT	M	USD	107.72	114.00	9.1%	USD	5.22	5.58	6.11	20.63	19.31	17.62
SPX			2,976.00				159.61	162.91	179.71	18.65	18.27	16.56

O - Outperform, M - Market-Perform, U - Underperform, N - Not Rated

MDT base year is 2019.

VALUATION METHODOLOGY

Intuitive Surgical Inc

ISRG: Our target price for ISRG is based on a 40.5x target P/E multiple, applied to our next twelve months' estimates, twelve months hence. The P/E target reflects observed absolute and relative historical multiples and our outlook for forward growth.

Johnson & Johnson

JNJ: Our target price for JNJ is based on a 15.5x target P/E multiple, applied to our next twelve months' estimates, twelve months hence. The P/E target reflects observed absolute and relative historical multiples and our outlook for forward growth. We also use current EV/EBITDA vs. history and DCFs as secondary inputs to our valuation.

Medtronic PLC

MDT: Our target price for MDT is based on a 17x target P/E multiple, applied to our next twelve months' estimates, twelve months hence. The P/E target reflects observed absolute and relative historical multiples and our outlook for forward growth.

RISKS

Intuitive Surgical Inc

Downside risks include: Major product recall, earlier than expected introduction of surgical robots from major competitors, changes in treatment guidelines for critical procedures (prostatectomy, hysterectomy, etc.), changes to the economic environment that significantly reduce healthcare spending levels.

Johnson & Johnson

Downside risks include: A major product recall; the risk that certain important brands face generic competition earlier than we currently model or erosion rates are faster than anticipated; the risk that key pipeline products fail; the risk that the company will overpay for acquisitions to make up for sluggish revenue growth throughout the portfolio; and / or market-wide deceleration across JNJ's end markets.

Upside risks include: The risk that JNJ has more pipeline success than what we forecast (Pharma and/or Devices); faster than expected growth in specific large verticals (notably Surgery, Orthopedics, or consumer health); and / or specific major product recalls at competitors.

Medtronic PLC

Downside risks include: A major product recall; the risk that key products fail to grow as expected; the risk that the company will overpay for acquisitions to make up for sluggish revenue growth throughout the portfolio; and / or market-wide deceleration across MDT's end markets.

Upside risks include: The risk that MDT has more success with the product pipeline than we forecast; faster than expected growth in specific large verticals (notably Surgery, DES, or Rhythm); and / or specific major product recalls at competitors. We

also acknowledge the risk that economic value / bundling could become a more important factor in hospital purchasing decisions than we anticipate, which could benefit MDT.

REQUIRED REGULATORY DISCLOSURES

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Ticker Rating Changes

ISRG	O (IC) 06/26/18
JNJ	M (IC) 06/26/18
MDT	M (IC) 06/26/18

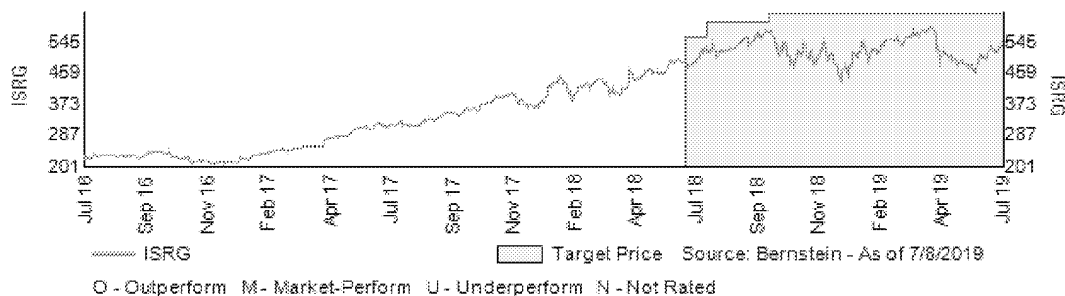
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Rating Actions: IC - Initiated Coverage, DC - Dropped Coverage, RC - Rating Change

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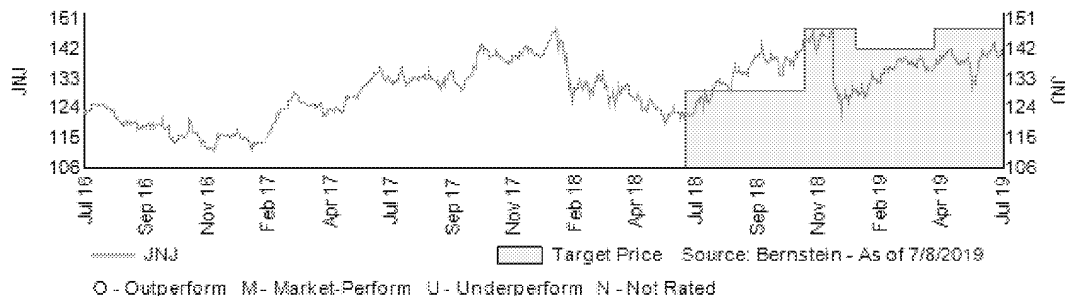
Date	Rating	Target(USD)
06/26/18	O(IC)	560.00
07/20/18	O	600.00
10/04/18	O	625.00

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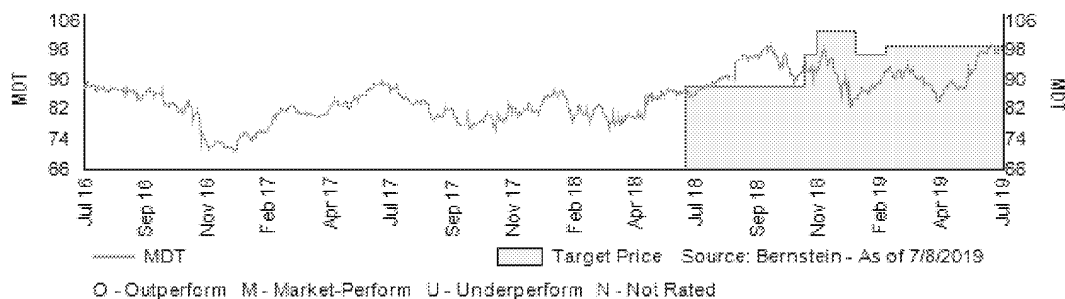
Date	Rating	Target(USD)
06/26/18	M(IC)	129.00
11/14/18	M	148.00
01/14/19	M	142.00
04/17/19	M	148.00

IC - Initiated Coverage

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Date	Rating	Target(USD)
06/26/18	M(IC)	88.00
11/14/18	M	97.00
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EXHIBIT 28

to

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TO EXCLUDE OUT-OF-COURT HOSPITAL
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April 19, 2014 01:00 AM

Surgical-robot costs put small hospitals in a bind

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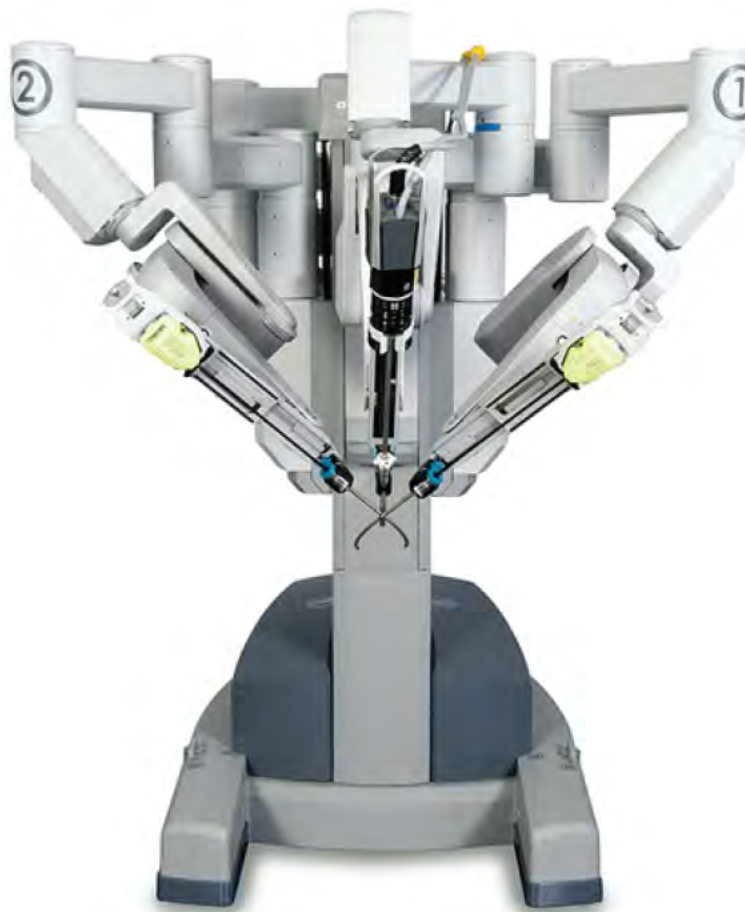
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REPRINTS



OB-GYN Dr. Brian Retherford recently operated on a patient who traveled six hours to Memorial Hospital, a critical-access hospital in Douglas, Wyo., because the 25-bed facility offered da Vinci robotic surgery as an option for a routine hysterectomy.

Memorial Hospital of Converse County last year purchased a \$2 million da Vinci Surgical System, the second hospital in Wyoming to do so. Memorial executives said they expect their facility to perform about 100 robotic surgeries a year. That's far below the estimated volume experts say is needed to produce a viable financial return within six years on the robotic system, whose average cost ranges from \$1.5 million to \$2 million.

Memorial, which reported an operating loss of \$2.2 million in the first half of fiscal 2014, used cash reserves to buy the da Vinci system, manufactured by Sunnyvale, Calif.-based Intuitive Surgical. Memorial said 40% of its cost will be reimbursed by **Medicare** as a capital expense because it is a critical-access hospital.

Ryan Smith, the hospital's CEO, said he doesn't mind if it takes awhile for the pricey new piece of equipment to pay off because it's already attracting patients who previously would have traveled to other hospitals in Colorado or Utah to get robotic surgery. Also, it helps his hospital recruit and retain surgeons, and is expected to reduce surgical complications and lengths of stay. "We did not buy the da Vinci system to get a very high return on investment," Smith said. "It was the right thing to do for our patients."

While overall sales of da Vinci systems are on the decline, a number of small and rural hospitals are considering following in Memorial Hospital's footsteps, believing it will help them attract and retain surgeons and appeal to patients. The government system for financing critical-access hospitals helps underwrite some of the costs.

But small hospitals going down that path will face the same issues now confronting major systems that have installed surgical robots. Some studies have raised doubts about whether robotic surgery offers better outcomes than standard laparoscopic procedures. And Intuitive Surgical faces dozens of product liability lawsuits across the country filed by patients who claim injuries from the device.

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The effect on marketing

"It's not just the clinical benefit or the bottom line," said Dr. Martin Makary, surgical director at Johns Hopkins Pancreas Multidisciplinary Cancer Clinic. Hospital CEOs "also look at the power to market the entire hospital."

There are no available statistics on how many critical-access hospitals and other small hospitals have purchased a da Vinci Surgical System. **Cost** is certainly an issue. In addition to the purchase price, the system has an annual service contract that costs between \$100,000 and \$170,000, and each procedure costs about \$1,200 to \$2,000 more than a laparoscopic operation because of the need for single-use tools. Insurers, however, pay the same rates for robotic and laparoscopic procedures.

For critical-access hospitals, Medicare helps subsidize the purchase as a capital expenditure on a depreciated basis, calculated by what percentage of patients are Medicare beneficiaries. But "it's a big question in terms of priorities and where your scarce resources are best used," said Brock Slabach, senior vice president of the National Rural Health Association. "Patients perceive it to be better. But is the cost worth the benefit?"

To make buying a da Vinci financially viable, hospitals generally need to perform 150 to 300 procedures annually for six years to offset the upfront and ongoing costs of acquiring it, said Vijay Kumar, associate managing director for ISI Group.

Intuitive Surgical, which declined to comment for this article, no longer reports a breakdown of the types of hospitals that own and operate its systems. But a 2010 Wall Street Journal article reported that 131 hospitals that had installed da Vinci systems had 200 or fewer beds. Overall, about 1,500 U.S. hospitals have installed the da Vinci Surgical System since it came to market in 2000. Intuitive offers the only robotic surgical system approved by the Food and Drug Administration.

MH TAKEAWAYS

Analysts say younger surgeons want to work at hospitals that have a da Vinci, and patients may prefer a hospital that has one because they see it as a state-of-the-art facility.

A recruiting tool

Market analysts say smaller hospitals face pressure to buy the da Vinci system because many new surgeons in training, particularly those in urology and gynecology, receive robotic surgical training as residents and want to work at hospitals that have the **technology**. And patients may choose a hospital with a da Vinci system based on the perception that it's a state-of-the-art facility.

More small hospitals view the da Vinci system "as a tool they need to recruit and retain surgeons and to stay viable," said Liz Tiernan, a consultant in the Advisory Board Co.'s research and insights groups. "It is considered a standard of care but it's rarely financially viable for them."

Hospitals of all sizes say they are developing credentialing programs and limiting access to the system to the most experienced and skilled surgeons. Training and credentialing are a big concern because there is a steep learning curve in using the da Vinci system, with a risk of serious injuries to patients if surgical mistakes are made. Experts say surgeons need experience with 20 to 30 robot-assisted procedures before they are adequately trained.

Memorial Hospital acquired a simulator to help train its surgeons. "We are not concerned about the proficiency of our surgeons," a Memorial spokesman said. "We owned the robot for six months before any surgeries were performed. During that time, the surgeons trained on the simulator and traveled to other active da Vinci sites to work with surgeons."

But when surgeons at a smaller hospital don't reach the estimated proficiency threshold, that raises questions about the adequacy of their experience. "It becomes even more difficult to justify this decision," Tiernan said.

North Valley Hospital, a 25-bed critical-access hospital in Whitefish, Mont., has 11 surgeons trained in robotic surgery, including seven surgeons recruited since the hospital implemented the robotics program in 2010, according to a hospital spokeswoman. It performed about 250 robot c procedures last year. When it bought the system, it was the only hospital in northwest Montana to have a da Vinci, though Kalispell Regional Healthcare has since acquired two da Vincis.

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Consider all variables

"If a hospital makes that decision, they need to consider all of the variables, which includes taking a look at efficacy and cost-effectiveness and really make sure they hammer out their training programs," said Chris Schabowsky, senior project officer for health devices at the ECRI Institute.

Meanwhile, Intuitive Surgical is facing pressure to pump up sales. In an April 8 preview of its first-quarter results, company officials braced investors for a 24% decline in revenue as fewer hospitals invest in robotic surgery systems.

Intuitive said it sold only 45 da Vinci systems in the U.S. in the first quarter of 2014, compared with 115 during the same period in 2013. Full company earnings are scheduled for release April 22.

There were 240,000 robot-assisted gynecologic procedures in 2013, compared with 222,000 in 2012 and 170,000 in 2011. Nearly 80% of prostatectomies performed in the U.S. now use the da Vinci system. The company attributed lower gynecological-procedure growth rates last year to market saturation, pressure on hospital admissions, negative media attention and insurers pushing for conservative treatments and more treatments in outpatient settings.

This month, the company said it would book a \$67 million pre-tax charge related to an expected product liability settlement that will resolve claims that patients suffered complications from its monopolar curved scissors, which were recalled in 2013, and the scissors' first-generation tip covers, which were withdrawn from the market in 2012.

The American College of Obstetricians and Gynecologists issued a strongly worded statement last year urging women to separate "marketing hype from the reality" when choosing a surgical approach to hysterectomy. "There (are) no good data proving that robotic hysterectomy is even as good as—let alone better—than existing, and far less costly, minimally invasive alternatives," ACOG President Dr. James Breeden said in a March 2013 statement.

While some small hospitals see strong reasons for buying a da Vinci, it's not going to be viable for many others, including most critical-access hospitals, said Slabach of the National Rural Health Association. "I don't think we should look any time soon for da

Vincis to be placed in every single critical-access hospital in the country,” he said. “Though I’m sure the manufacturer would love that.”

—with [Harris Meyer](#)

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Anna Arsenous • 4 years ago



ne hidden great value of the Da Vinci system is in providing comfort, precision and excellent assistance to the operating surgeon- which ultimately translate into excellent care and outcome for the patient.

A Da Vinci system is not a vehicle of financial investment or marketing, despite possessing such potential .

t's utilization will decrease the burden of inavailability of adequate operative assistance at a smaller or rural hospital. (Another mportant limiting factor in retaining a surgeon in smaller hospitals)

Laparoscopic surgery is very harsh on the joints of the surgeon; hence the availability of the Da Vincci system will enables experienced surgeons to continue performing complex surgeries , which latter in term may provide better training for Residents being trained at smaller hospitals .

Partially this over sight is consequence of "replace/don't fix " sociatal culture which prevails currently- latter manifesting in instances as disregard for value of the doctors as the prime assets of the hospital. t should be noted - administrator of no hospital can treat the ailment of any patient .

But perhaps a good administrator will negotiate higher reimbursement for a robotic surgery Than a laparoscopic procedure.

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Paul Sherman • 7 years ago

Another challenge mentioned above is the cost of the annual service contract. Intuitive provides no other service option, even though many hospitals have in-house staff fully capable of maintaining and repairing the daVinci. In house service typically costs 1/2 of a service contract and has a response time of minutes, rather than hours. This s particularly vital if the systems fails during a procedure.

By requiring a service contract, Intuitive is focusing on their revenue to the detriment of the hospital and the patient.

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Claudio Teri • 7 years ago

Great article.

Mr Lancey thanks for your comment. I agree on the concept of value for money".

All those small hospitals that have purchased these expensive robots could receive funds from my company, which is supplying a free online service and funds non-profit, research, small healthcare facilities.

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
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EXHIBIT 29

to

**PAUL D. BRACHMAN DECLARATION IN SUPPORT
OF DEFENDANT'S MOTION IN LIMINE NO. 1
TO EXCLUDE OUT-OF-COURT HOSPITAL
STATEMENTS**

Message

From: cparker@restorerobotics.com [cparker@restorerobotics.com]
Sent: 9/17/2019 11:49:47 AM
To: 'Mills Vautrot' [mvautrot@restorerobotics.com]; 'Kmay_restorerobotics.com' [kmay@restorerobotics.com]
Subject: FW: 3x robotic inst

See below. I wonder if Intuitive has done something?

Clif Parker

Restore Robotics
850-832-2834

From: Kamberov, Steven [mailto:SKamberov@medline.com]
Sent: Tuesday, September 17, 2019 12:28 PM
To: cparker@restorerobotics.com
Subject: Fwd: 3x robotic inst

Hello Clif,

Please see below. How is this normally handled ?

Steven Kamberov
ReNewal Program Specialist
Field Sales - Michigan
Medline Industries, Inc.
www.medline.com

[\(734\)355-7717](tel:(734)355-7717) (Phone)
SKamberov@medline.com

[\(866\)866-7477](tel:(866)866-7477) (ReNewal Customer Service)

Begin forwarded message:

From: "Barber-Walker, Stacey" <sbarberwalker@mhc.net>
Date: September 17, 2019 at 12:19:55 PM EDT
To: "Kamberov, Steven" <SKamberov@medline.com>
Subject: RE: 3x robotic inst

Thanks.

On another note: Late yesterday afternoon during a Robotics case, a monopolar scissor that just went into service that has been repaired through this program, sn n10190201-249 ver 22, would not work in the arm. Staff loaded and unloaded it multiple times and the system said 'instrument un-recognized'. What is the process of sending it back and getting credit?

*Stacey Barber-Walker, MM, CBSPM
Munson, Otsego Memorial Hospital
Periop Equipment, Inventory & Project Manager
O.989.731.2120
M.989.731.6154*

sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

From: Kamberov, Steven <SKamberov@medline.com>
Sent: Tuesday, September 17, 2019 11:38 AM
To: Barber-Walker, Stacey <sbarberwalker@mhc.net>
Subject: Re: 3x robotic inst

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Stacey,

I should have this list later today or early tomorrow.

Steven Kamberov
ReNewal Program Specialist
Field Sales - Michigan
Medline Industries, Inc.
www.medline.com

(734)355-7717 (Phone)
SKamberov@medline.com

(866)866-7477 (ReNewal Customer Service)

On Sep 16, 2019, at 1:02 PM, Barber-Walker, Stacey <sbarberwalker@mhc.net> wrote:

Steven, another thing: I believe I asked for a list of current customers early when this was presented to me in July. If you already sent it to me I apologize because I can't locate it. Can you please send/resend to me a list of current customers that is using this 'Renewal' process for Robotics. thanks

Stacey Barber-Walker, MM, CBSPM
Munson, Otsego Memorial Hospital
Periop Equipment, Inventory & Project Manager
O.989.731.2120
M.989.731.6154
sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

From: Barber-Walker, Stacey
Sent: Monday, September 16, 2019 10:45 AM
To: 'Kamberov, Steven' <SKamberov@medline.com>
Subject: RE: 3x robotic inst

Yes please cancel the order and call tag.

I was off Thur and Fri and I guess they sent a letter and called Munson main, And in return called OMH senior leadership. Not sure what the letter says other than something like the use of 3rd party repaired instruments will void any service and warranty to our Robot. So I guess our senior leadership is working with our legal team on it and for now I have been told to stop sending them

Stacey Barber-Walker, MM, CBSPM
Munson, Otsego Memorial Hospital
Periop Equipment, Inventory & Project Manager
O.989.731.2120
M.989.731.6154
sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

From: Kamberov, Steven <SKamberov@medline.com>
Sent: Monday, September 16, 2019 10:33 AM
To: Barber-Walker, Stacey <sbarberwalker@mhc.net>
Subject: Re: 3x robotic inst

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Hello Stacey,

Thank you for reaching out. Would you be able to provide me with more information on the backlash from Intuitive and what they stated? Anything you may be able to tell me would be very helpful.

In regards to the PO below, I have the call tag ready - I wanted to clarify you wanted the order canceled entirely and the call tag discarded before I removed anything in the system.

Best,

Steven Kamberov
ReNewal Program Specialist
Field Sales - Michigan
Medline Industries, Inc.
www.medline.com

[\(734\)355-7717](tel:(734)355-7717) (Phone)
SKamberov@medline.com

[\(866\)866-7477](tel:(866)866-7477) (ReNewal Customer Service)

On Sep 16, 2019, at 10:26 AM, Barber-Walker, Stacey <sbarberwalker@mhc.net> wrote:

<image001.gif>

Steven, due to some backlash from Intuitive, senior administration at this time has decided to way the pros and cons of servicing our SI robotic instruments. Please continue repairing the ones that may still be at the lab, but I will be cancelling the PO below and not sending in any more instruments for repair at this time. Sorry for this.

Stacey Barber-Walker, MM, CBSPM
Munson, Otsego Memorial Hospital
Periop Equipment, Inventory & Project Manager
O.989.731.2120
M.989.731.6154
sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

From: Barber-Walker, Stacey
Sent: Monday, September 16, 2019 8:23 AM
To: 'Kamberov, Steven' <SKamberov@medline.com>
Cc: Franckowiak, Cindy <cfranckowiak@mhc.net>
Subject: RE: 3x robotic inst

Please also add: Mega suture cut NH
#420309 n10180412 759 ver 06.
 MONO scissor,
cvt #420179 n10181113 746 ver 22

Use PO#0059143

Stacey Barber-Walker, MM, CBSPM
Munson, Otsego Memorial Hospital
Periop Equipment, Inventory & Project Manager
O.989.731.2120
M.989.731.6154
sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

From: Kamberov, Steven <SKamberov@medline.com>
Sent: Thursday, September 12, 2019 10:36 AM
To: Barber-Walker, Stacey <sbarberwalker@mhc.net>
Cc: Franckowiak, Cindy <cfranckowiak@mhc.net>
Subject: RE: 3x robotic inst

****WARNING:** This email originated from outside of Munson Healthcare ******
DO NOT CLICK on any links or open any attachments unless you
 recognize the sender and are expecting the message.
NEVER provide your login or password

Hello Stacey,

I just need a PO and I can get this going!

<image002.png> Steven Kamberov
 ReNewal Program Specialist
 Field Sales - Michigan
 Medline Industries, Inc.
www.medline.com

 (734)355-7717 (Phone)
SKamberov@medline.com

 (866)866-7477 (ReNewal Customer Service)
 <image004.png>

From: Barber-Walker, Stacey <sbarberwalker@mhc.net>
Sent: Wednesday, September 11, 2019 5:10 PM
To: Kamberov, Steven <SKamberov@medline.com>
Subject: 3x robotic inst
Importance: High

Hello Steven I have 4 robotic instruments that I need an RMA to
 send in for repair:

- Prograspx2 420093 ver14 lot
 N10190221 444
 Ver14 lotN10
 190221 454
- Cadier fcp 420049 ver09 lot
 N10180126 327
- Cautery hook 420183 ver12 lot
 N10180510 297

*Stacey Barber-Walker, MM, CBSPM
 Munson, Otsego Memorial Hospital
 Periop Equipment, Inventory & Project Manager
 O.989.731.2120
 M.989.731.6154*

sbarberwalker@mhc.net

"When you are enthusiastic about what you do, you feel this positive energy. It's very simple."

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Attorneys for Plaintiff and Counter-Defendant,
SURGICAL INSTRUMENT SERVICE COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**SURGICAL INSTRUMENT SERVICE
COMPANY, INC.**

*Plaintiff/Counter-
Defendant,*

v.

INTUITIVE SURGICAL, INC.

Defendant/Counterclaimant.

CASE NO. 3:21-CV-03496-AMO

Honorable Araceli Martínez-Olguín

**PLAINTIFF SIS's OPPOSITION TO
INTUITIVE'S MOTION IN LIMINE
#1**

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TABLE OF AUTHORITIES

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Cases

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<i>Marjam Supply Co. v. Firestone Bldg. Prod. Co., LLC</i> , No. 11- CV-7119(WJM), 2019 WL 1451105 (D.N.J. Apr. 2, 2019)	5

Defendant, Intuitive Surgical, Inc. ("Intuitive") claims that "SIS will attempt to build its case at trial using [three] categories of inadmissible hearsay." Intuitive appears to suggest that any and all live testimony from SIS witnesses, any and all deposition testimony from non-party witnesses, and any and all documents dealing with the various out-of-court statements made by hospital customer representatives are categorically inadmissible evidence which the jury may not consider at trial. Intuitive's Motion in Limine No. 1 at p. 1:7-14 ("Mtn"). Without any rational basis, Intuitive asserts that SIS will "turn this trial into a game of telephone about what hospitals supposedly told them." Mtn. at 2:16-17. Intuitive's claims are unfounded, its suppositions are inaccurate, its legal arguments are inapplicable, and the motion should be denied.

BACKGROUND

There is ample evidence that Intuitive's threats were the direct cause of the complete shutdown of the market for repaired EndoWrists, including for SIS customers. [REDACTED]

[REDACTED]

[REDACTED]²

Intuitive's overall process in response to learning of a hospital refurbishing its EndoWrist surgical instruments through a third-party repairer generally took a short period of time: ten business days for the conversation phase, ten business days for the customer letter, and five business days for account termination.³ At some point, if hospitals didn't accede to Intuitive's demands, they would encounter a service message on the da Vinci robot, and without Intuitive providing service, that da Vinci robot would be unusable for surgery.⁴ As Intuitive's Ron Bair

¹ E.g., Van Hoven Ex. 1 (Trial Exh. 560) at Intuitive-00439335. [REDACTED]

E.g., *id.* at Intuitive-00439337, -00439345-46.

³ E.g., *id.* at Intuitive-00439336; Van Hoven Ex. 2 (AJ Inacay Deposition) at 163:1-164:3.

⁴ E.g., Van Hoven Ex. 3 (Vavoso Deposition) at 227:13-228:18.

1 explained, "if Intuitive doesn't service [a da Vinci] robot and the robot fails, it means the
 2 hospital can no longer do surgeries with that robot."⁵ Following through on its "cease and
 3 desist" strategy, Intuitive terminated four customer accounts who refused to comply with its
 4 demands: Conway Regional Medical Center; Pacific Coast Surgical Center; White County
 5 Medical Center; and Panama City Surgery. [REDACTED]

6 [REDACTED]
 7 [REDACTED]⁶

8 Because Intuitive's threats were so effective, most hospitals never got to the final stage
 9 of shutdown of their robot program. Intuitive's Glenn Vavoso testified that after receiving
 10 these cease-and-desist letters from Intuitive, many hospitals stopped using third-party services
 11 to repair their EndoWrist surgical instruments.⁷ **"Q. Is there any instance that you can**
 12 **identify, as Intuitive's 30(b)(6) witness, where a hospital continued using Rebotix's**
 13 **services after receiving these letters from Intuitive? A. Not -- not at this time."**⁸ Vavoso
 14 Deposition at 226:18-22 (emphasis added). As an example, following its standard operating
 15 procedure, Intuitive sent a cease and desist letter to one of SIS's EndoWrist repair customers,
 16 Marin General Hospital on October 26, 2019.⁹ In November 2019, executives at Intuitive were
 17 concerned about the competitive threat posed by SIS based on the fact that Marin General
 18 Hospital had been using SIS repaired EndoWrist instruments.¹⁰ Erin Grinberg of Intuitive
 19 noted that Marin General Hospital was "very proud of this and celebrated the cost savings."¹¹
 20 In devising a plan for how to address the ongoing competitive threat posed by SIS at Marin
 21 General Hospital, Adam Clark of Intuitive noted that it was "important for MG [Marin
 22 General] to understand that we will be canceling their SLSA in short order if this keeps
 23 happening."¹²

24 ⁵ Van Hoven Ex. 4 (Bair Deposition) at 136:2-5.

25 ⁶ Van Hoven Ex. 1 at Intuitive-00439338.

26 ⁷ Van Hoven Ex. 3 (Vavoso Deposition) at 225:24-226:22.

27 ⁸ *Id.* at 226:18-22 (emphasis added).

28 ⁹ Van Hoven Ex. 5 at Intuitive-00373885-00373887 (Trial Ex. 556).

¹⁰ Van Hoven Ex. 6 at Intuitive-00049108-112 (Trial Ex. 489).

¹¹ *Id.* at Intuitive-00049112.

¹² Van Hoven Ex. 7 (Intuitive-00110473-0478) at -0474 (Trial Ex. 511).

Intuitive's enforcement of its sales agreement succeeded in preventing rival third-party repairers/refurbishers (such as SIS) from competing effectively in the EndoWrist repair and replacement market. SIS's Greg Posdal will testify at trial that SIS's EndoWrist refurbishment service started very well and was very well received by all the potential hospital customers that were approached. Keith Johnson will testify about his presentations to prospective hospital customers regarding SIS's EndoWrist refurbishment services, the monumental interest in that service shown by the hospitals, and the resulting sales SIS was able to achieve before Intuitive's intimidation campaign shut down SIS's business. Mr. Johnson will testify that after SIS's customers received the Intuitive cease and desist letters, SIS was not able to make any more sales for the refurbishment of EndoWrist instruments. Keith Johnson will also testify that decision makers at various hospitals told him that they would no longer be using or would not consider using SIS to refurbish their EndoWrist instruments.

Intuitive has made clear that it intends to attack SIS's claims based on the limited number of SIS hospital customers who actually received repaired EndoWrists from SIS before Intuitive's complete shutdown of the market. *See, e.g.*, Dkt. 230-7 at pp. 9-10 (public version of Intuitive Opposition and Cross-Motion re Summary Judgment). Intuitive has also made clear that it intends to argue that SIS should have pursued 510(k)s and sales of "remanufactured" EndoWrist's after Intuitive's self-serving and post-discovery announcement of March, 2023 that it would not enforce its contractual restrictions against 510(k) approved EndoWrists. Dkt. 243-1 at pp. 4-5.

ARGUMENT

1. A Blanket Ruling on These Statements Is Inappropriate at this Time

In many instances, evidentiary rulings "should be deferred until trial, so that questions of foundation, relevancy, and potential prejudice may be resolved in proper context." *United States v. Pac. Gas & Elec. Co.* ("PG&E"), 178 F. Supp. 3d 927, 941 (N.D. Cal. 2016). For example, in order to exclude evidence on a motion in limine, "the evidence must be inadmissible on all potential grounds." *McConnell v. Wal-Mart Stores, Inc.*, 995 F. Supp. 2d 1164, 1167 (D. Nev. 2014). These principles apply to many, if not all, of the issues Intuitive

1 has raised regarding possible deposition testimony and documentary evidence that may be
 2 offered at trial, as explained further below. Accordingly, SIS submits that ruling on such
 3 matters should be deferred until trial. While it is impossible to predict every scenario that may
 4 arise, there will certainly be instances where evidence will be proffered that relates to matters
 5 that were relayed to SIS and Intuitive by third parties (including hospitals). There are two
 6 primary reasons that the Court may decide to let such evidence into the record. First, the
 7 evidence is offered to explain, for example, SIS's attitude toward the market (Fed. R. Evid.
 8 801(c)). Second, the evidence is admissible for the purposes of showing the customers' motives
 9 and perceptions, consumer demand, and Intuitive's coercion through its unremitting policy of
 10 enforcing unlawful contract terms pursuant to Fed. R. Evid. 803(3).

11 2. Many or Most Statements Would not Be Offered For the Truth of
 12 the Matter Asserted

13 Some of the out-of-court statements by hospital representatives are not hearsay because
 14 they are “not offered in evidence to prove the truth of the matter asserted.” Fed. R. Evid. 801(c).
 15 For example, if Keith Johnson testifies that all or nearly all of the hospital representatives he
 16 met with told him that they “hemorrhage money to Intuitive Surgical” and were “looking for
 17 ways to reduce costs”, those out-of-court statements would not be offered to prove the truth of
 18 the matter being asserted. The same would be true if Johnson testifies that “customers said
 19 they were concerned about moving forward [with modified EndoWrists] because of what they
 20 were told by Intuitive.” These statements are admissible at trial because they would not be
 21 offered to prove the matters asserted, *i.e.*, that hospitals were in fact losing money on robotic
 22 surgery or looking for ways to reduce costs, or to prove that hospitals would have purchased
 23 modified EndoWrists from SIS but-for Intuitive. Rather, such statements would be offered to
 24 show that the communication occurred, which is indisputably relevant to multiple issues
 25 including customer demand and coercion by Intuitive, and to show why SIS did not pursue
 26 EndoWrist repair after Intuitive shut down the market or after Intuitive's self-serving
 27 announcement that it would not enforce its contractual restrictions for 510(k) approved repair.

28 SIS may also testify regarding questions that hospital customers asked them. As an

1 example, SIS may seek to introduce an email chain where a hospital declarant asks Intuitive
 2 whether allowing SIS to modify its EndoWrist instruments would void the instrument
 3 warranty.¹³ Intuitive argues that this documentary evidence is inadmissible. Mtn. 5:9-11. It is
 4 well-established, however, that questions are not hearsay because they do not assert the truth
 5 of anything. *See, e.g., United States v. Coplan*, 703 F.3d 46, 84 (2d Cir. 2012) (“questions are
 6 not ‘assertions’ within meaning of Rule 801) (citing *United States v. Oguns*, 921 F.2d 442, 449
 7 (2d Cir. 1990) (“An inquiry is not an ‘assertion,’ and accordingly is not and cannot be a hearsay
 8 statement.”)).

9 3. The Statements Are Admissible as State of Mind Evidence

10 Additionally, out-of-court statements by SIS hospital customers are relevant and
 11 admissible for the purposes of showing the customers' and SIS's motives and perceptions,
 12 consumer demand, Intuitive's coercion through its unremitting policy of enforcing unlawful
 13 contract terms, and others' state of mind in response to that coercion. The out-of-court
 14 statements by SIS hospital customers are admissible under Federal Rule of Evidence 803(3)
 15 (excluding from hearsay rule “[a] statement of the declarant's then-existing state of mind (such
 16 as motive, intent, or plan)”). *See also Callahan v. A.E.V., Inc.*, 182 F.3d 237, 252 (3d Cir.
 17 1999) (holding customers' statements concerning why they no longer purchased from
 18 plaintiffs' beer distributorships were admissible to prove customers' motives for no longer
 19 purchasing from plaintiffs); *Marjam Supply Co. v. Firestone Bldg. Prod. Co., LLC*, No. 11-
 20 CV-7119(WJM), 2019 WL 1451105, at *4 (D.N.J. Apr. 2, 2019) (holding customers' out-of-
 21 court statements were “admissible to evidence [plaintiff's] customers' motives for switching
 22 distributors” where plaintiff “offer[ed] other admissible evidence of actual diverted sales in
 23 the form of an expert report”) (citations omitted).

24 *Consol. Credit Agency v. Equifax, Inc.*, 2005 WL 6218038, at *2 (C.D. Cal. Jan. 26,
 25 2005) (cited by Intuitive) explains that the state of mind exception requires: (1) the statement
 26 was made contemporaneously with the mental state to be proven; (2) circumstances do not
 27 suggest a motive for the declarant to fabricate or misrepresent his or her thoughts; and (3) the

28 ¹³ *E.g., Van Hoven Ex. 8* (Intuitive-00110255) at -0256 (Trial Ex. No. 510).

1 declarant's state of mind is relevant to an issue in the case. Here, those assessments can be
2 made as evidence are presented, without a blanket preclusion of evidence that satisfies these
3 requirements.

4 Two cases cited by Intuitive are not pertinent to the actual issues presented in its motion.
5 In *Buckeye Powder Co. v. E.I. DuPont de Nemours Powder Co.*, 248 U.S. 55, 65 (1918),
6 statements of reasons for refusing to do business with plaintiff were excluded because they
7 were proffered for the truth of the matter. *Id.* In *Stelwagon Mfg. Co. v. Tarmac Roofing*
8 *Systems, Inc.*, 63 F.3d 1267 (3d Cir. 1995), the appellate court ruled that the district court's
9 reliance on the statements admitted under Rule 803(3) as proof of actual antitrust damages, in
10 the form of lost sales, was error. *Id.* at 1274-75. In both cases, the statements were used for
11 purposes other than state of mind.

12 “[T]he reasons for the state of mind exception focus on the contemporaneity of the
13 statement and the unlikelihood of deliberate or conscious misrepresentation.” *United States v.*
14 *Cardascia*, 951 F.2d 474, 487 (2d Cir. 1991). What is important is the likelihood that the
15 declarants' statements are trustworthy and that the declarants were privy to or influenced the
16 customer's decision-making process. For example, in *Packgen v. Berry Plastics Corp.*, 847
17 F.3d 80, 91 (1st Cir. 2017), the district court permitted the plaintiff's “president and its sales
18 manager to testify that decision-makers at the thirty-seven refineries had told them” that they
19 intended to purchase a certain type of container. On appeal, the First Circuit agreed that such
20 testimony was admissible because the plaintiffs' “witnesses knew the declarants and testified
21 that all declarants were decision-makers at their respective refineries.” *Id.* Similarly, in this
22 case, SIS will introduce testimony at trial that will establish that declarants of out-of-court
23 hospital statements were involved in the decision-making process at their respective hospitals.

24 In another case cited by Intuitive, *Discover Fin. Servs. v. Visa U.S.A. Inc.*, 2008 WL
25 4560707, at *1 (S.D.N.Y. Oct. 9, 2008), the court ruled that testimony concerning the
26 motivation of customers for ceasing to deal with a business **was** admissible under the “state of
27 mind” exception, provided that there is otherwise admissible proof that business was lost. *Id.*
28 Intuitive's motion fails to identify how the declarants at issue here were remote from the

1 decision-making process such that the inclusion of their statements would not have any
 2 tendency to make it more or less probable that the hospital did not use SIS's refurbishment
 3 services because of Intuitive's threats.

4 CONCLUSION

5 SIS will proffer substantial evidence at trial sufficient to establish the actual lost sales for
 6 each hospital where it may also introduce out-of-court customer statements under Rule 803(3).
 7 It may also offer hospital statements for proper purposes such as establishing motive for these
 8 actual lost sales and rebutting claims that it should have persisted after shut down of the repair
 9 market.

10 For the foregoing reasons, SIS respectfully requests that the Court deny Intuitive's
 11 Motion in Limine No. 1.

12
 13 Dated: November 7, 2024

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20 *Attorneys for Plaintiff and Counter-Defendant,*
 21 SURGICAL INSTRUMENT SERVICE
 22 COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2024, I caused a copy of the foregoing
PLAINTIFF SIS's OPPOSITION TO INTUITIVE'S MOTION IN LIMINE #1, to be
electronically to be served *via* electronic mail to counsel of record:

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13
14 Dated: November 7, 2024

By: /s/ Joshua Van Hoven
JOSHUA V. VAN HOVEN

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8 **SURGICAL INSTRUMENT SERVICE COMPANY, INC.**

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **SURGICAL INSTRUMENT SERVICE**
12 **COMPANY, INC.**

13 *Plaintiff/Counter-Defendant,*

14 v.

15 **INTUITIVE SURGICAL, INC.**

16 *Defendant/Counterclaimant.*

CASE NO. 3:21-CV-03496-AMO

Honorable Araceli Martínez-Olguín

**DECLARATION OF JOSHUA VAN
HOVEN IN SUPPORT OF
PLAINTIFF SIS's OPPOSITION TO
INTUITIVE'S MOTION IN LIMINE
#1**

1 I, JOSHUA VAN HOVEN, declare as follows:

2 I am an attorney at the law firm of MCCAULLEY LAW GROUP LLC, attorneys for
3 Plaintiff SURGICAL INSTRUMENT SERVICE COMPANY, INC. (“SIS”) in this matter. I
4 have personal knowledge of the matters set forth herein, unless otherwise noted.

- 5 1. Attached as Exhibit 1 is a true and correct copy of Intuitive’s Unauthorized
6 Remanufactured Instructions Overview, which was produced by Intuitive in this
7 case and bates-labeled Intuitive-00439333-Intuitive-00439355.
- 8 2. Attached as Exhibit 2 is a true and correct copy of excerpts of the Deposition of
9 Antonio (AJ) Inacay, which was taken on June 8, 2021 in Rebotix Repair LLC v.
10 Intuitive Surgical, Inc., Case No. 8:20-CV-02274 (M.D. Fla).
- 11 3. Attached as Exhibit 3 is a true and correct copy of excerpts of the Deposition of
12 Glenn Vavoso, which was taken on May 14, 2021 in Rebotix Repair LLC v.
13 Intuitive Surgical, Inc., Case No. 8:20-CV-02274 (M.D. Fla).
- 14 4. Attached as Exhibit 4 is a true and correct copy of excerpts of the Deposition of
15 Ronald Lee Bair, Jr., which was taken on May 24, 2021 in Rebotix Repair LLC
16 v. Intuitive Surgical, Inc., Case No. 8:20-CV-02274 (M.D. Fla).
- 17 5. Attached as Exhibit 5 is a true and correct copy of an Intuitive Letter to Marin
18 General Hospital relating to refurbished EndoWrist instruments, which is dated
19 November 26, 2019, which was produced by Intuitive in this case and bates-
20 labeled Intuitive-00373885-Intuitive-00373887.
- 21 6. Attached as Exhibit 6 is a true and correct copy of e-mail correspondence between
22 Intuitive employees, starting on November 22, 2019, which was produced by
23 Intuitive in this case and bates-labeled Intuitive-00049108-Intuitive-00049112.
- 24 7. Attached as Exhibit 7 is a true and correct copy of e-mail correspondence between
25 Intuitive employees, starting on November 22, 2019, which was produced by
26 Intuitive in this case and bates-labeled Intuitive-00110473-Intuitive-00110478.
- 27 8. Attached as Exhibit 8 is a true and correct copy of e-mail correspondence between
28 Vizient, Inc., UF Health Shands, and Intuitive employees, starting on September

1 9, 2019, which was produced by Intuitive in this case and bates-labeled Intuitive-
2 00110255-Intuitive-00110258.

3
4 I declare under the penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.

6 Dated: November 7, 2024

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13 *Attorneys for Plaintiff and Counter-Defendant,*
14 SURGICAL INSTRUMENT SERVICE
15 COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2024, I caused a copy of the foregoing
DECLARATION OF JOSHUA VAN HOVEN IN SUPPORT OF PLAINTIFF SIS's
OPPOSITION TO INTUITIVE'S MOTION IN LIMINE #1, to be electronically to be
served *via* electronic mail to counsel of record:

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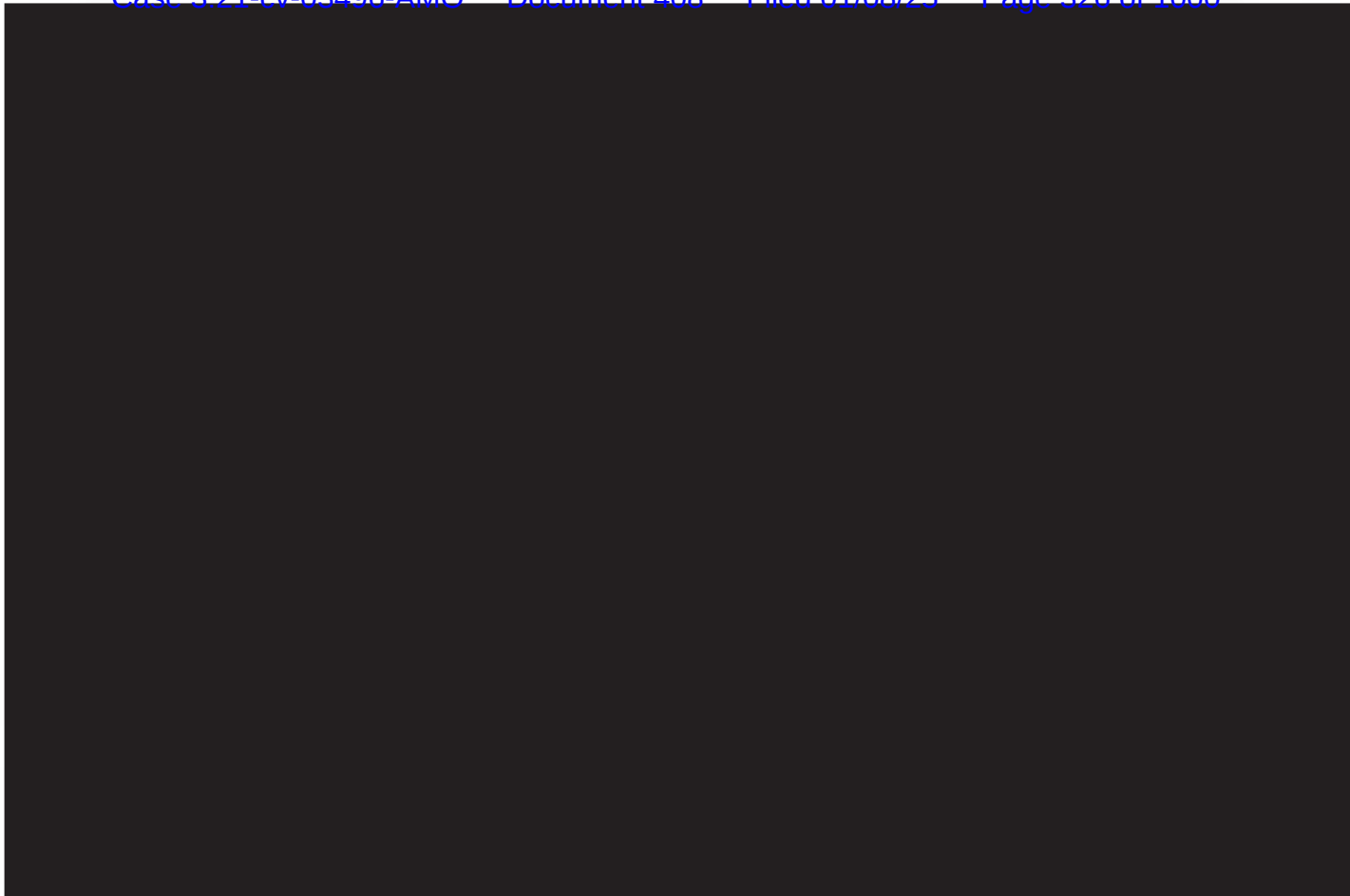
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14 Dated: November 7, 2024

By: /s/ Joshua Van Hoven
JOSHUA V. VAN HOVEN

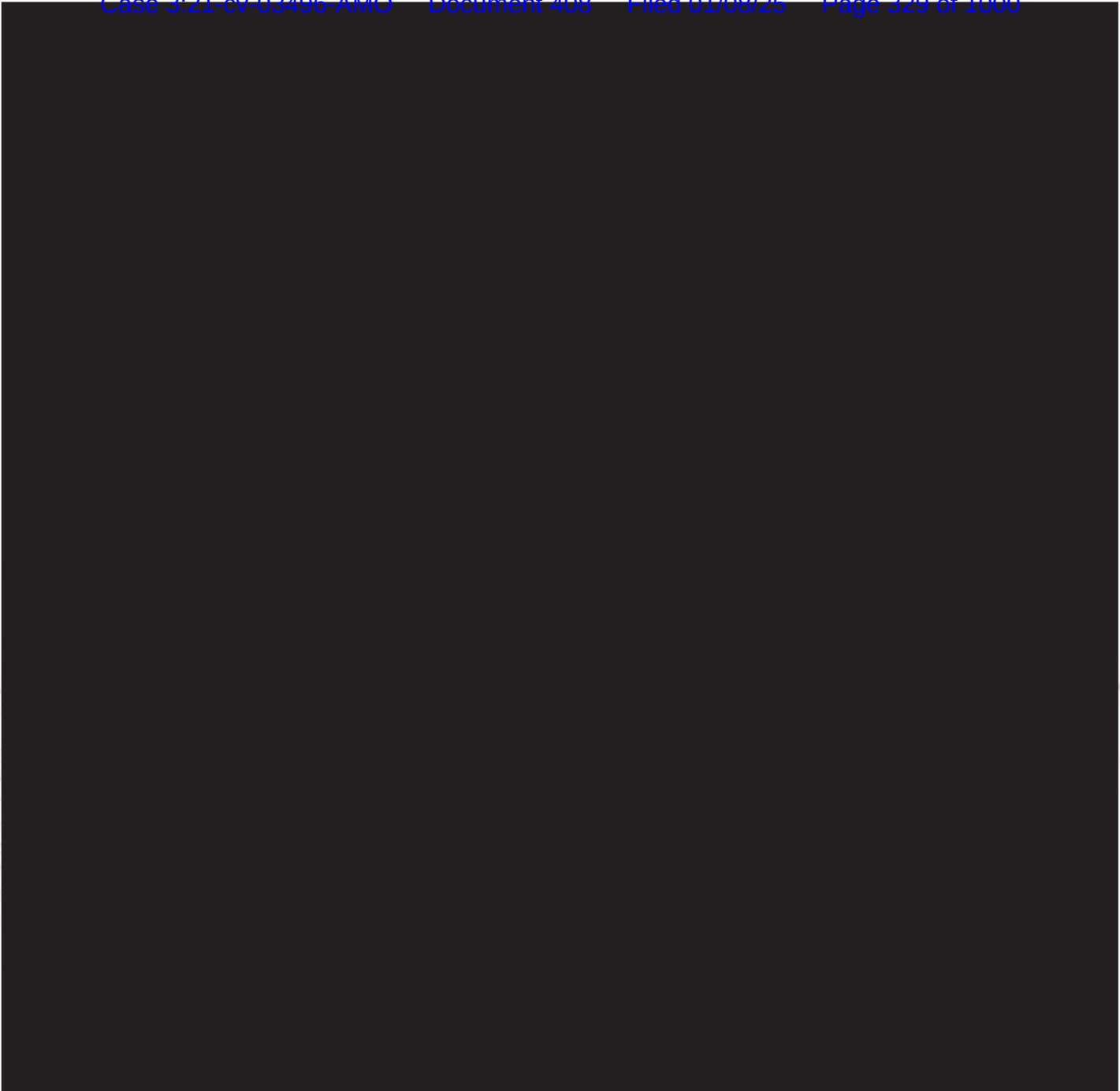
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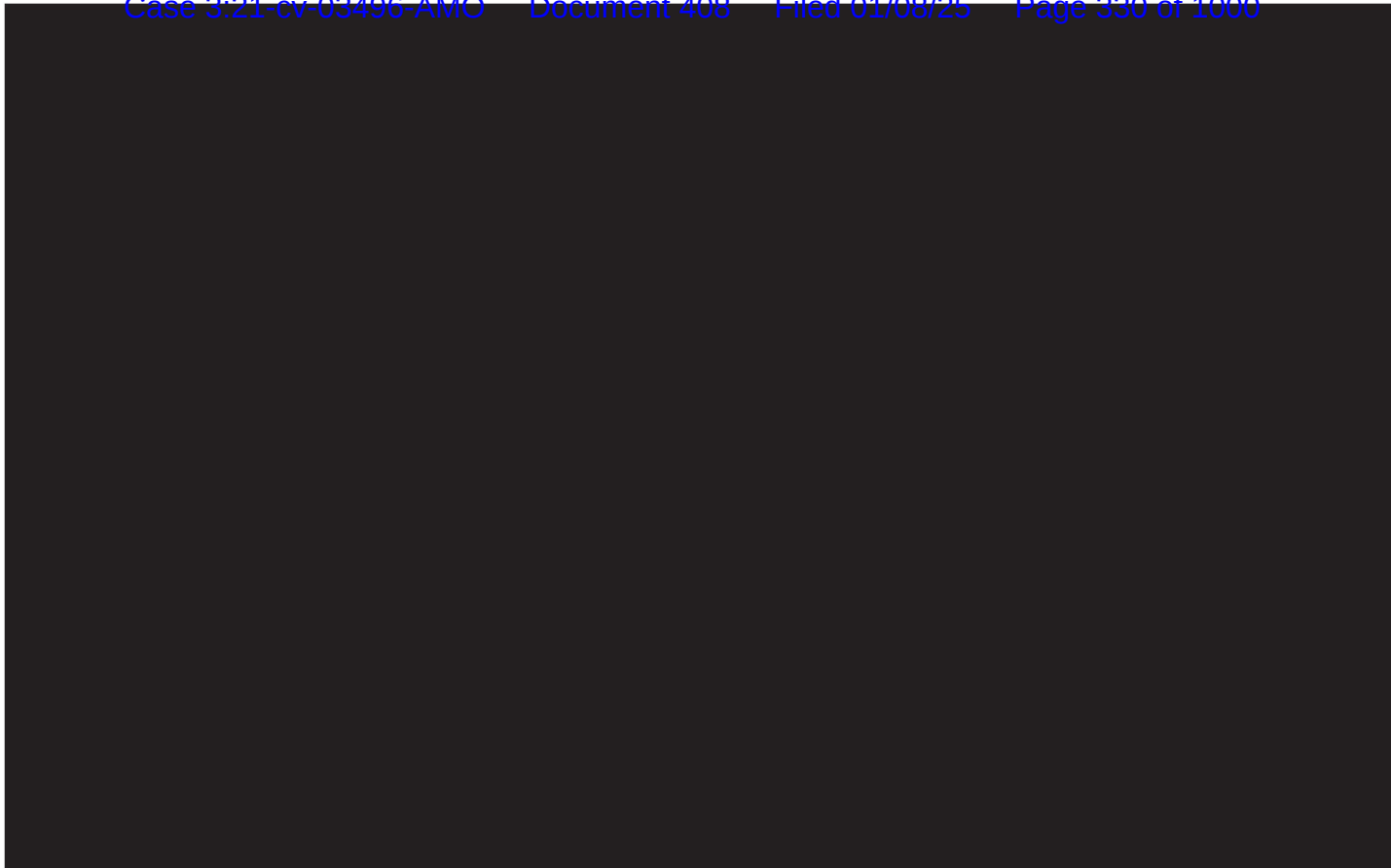


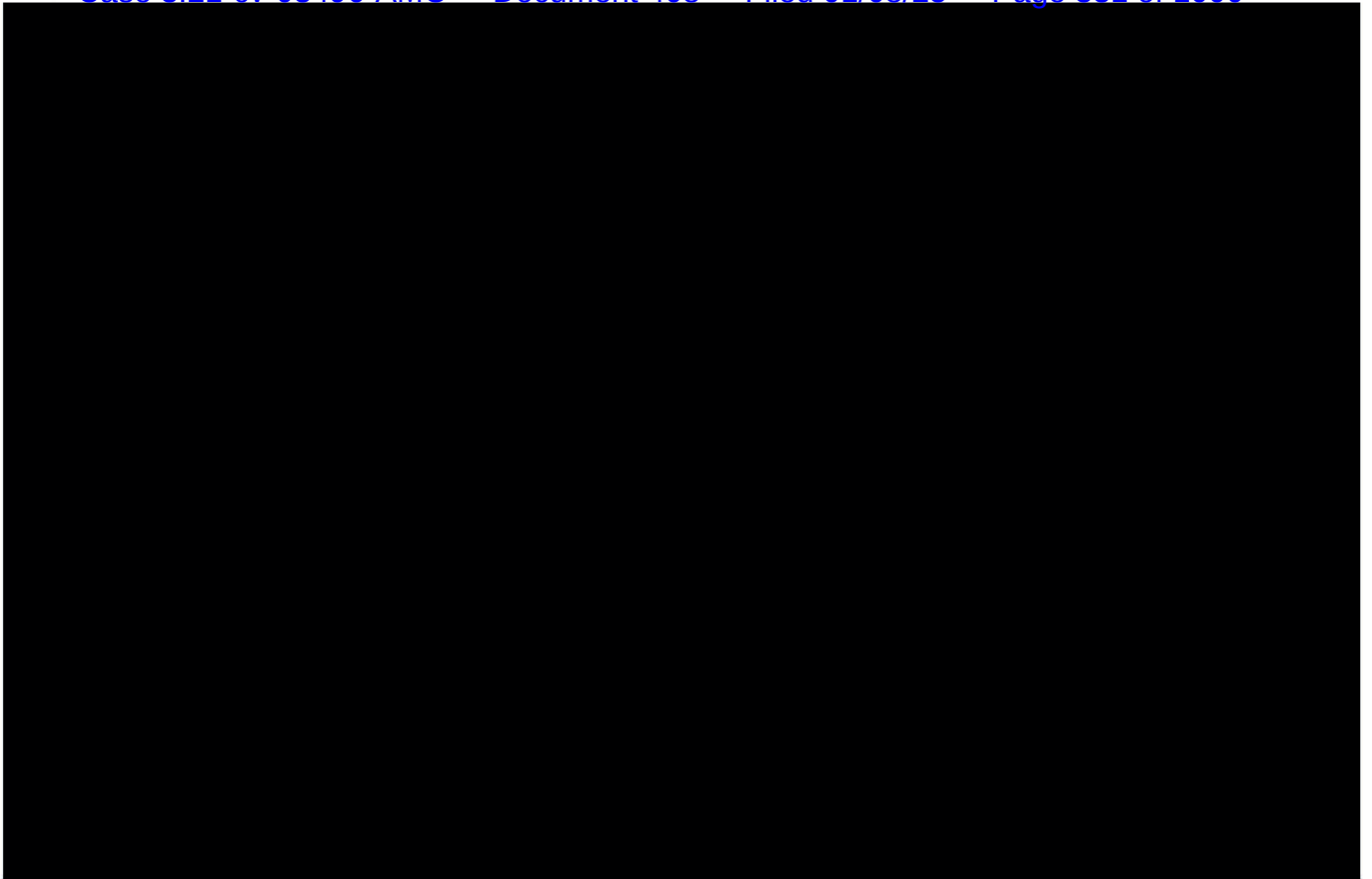


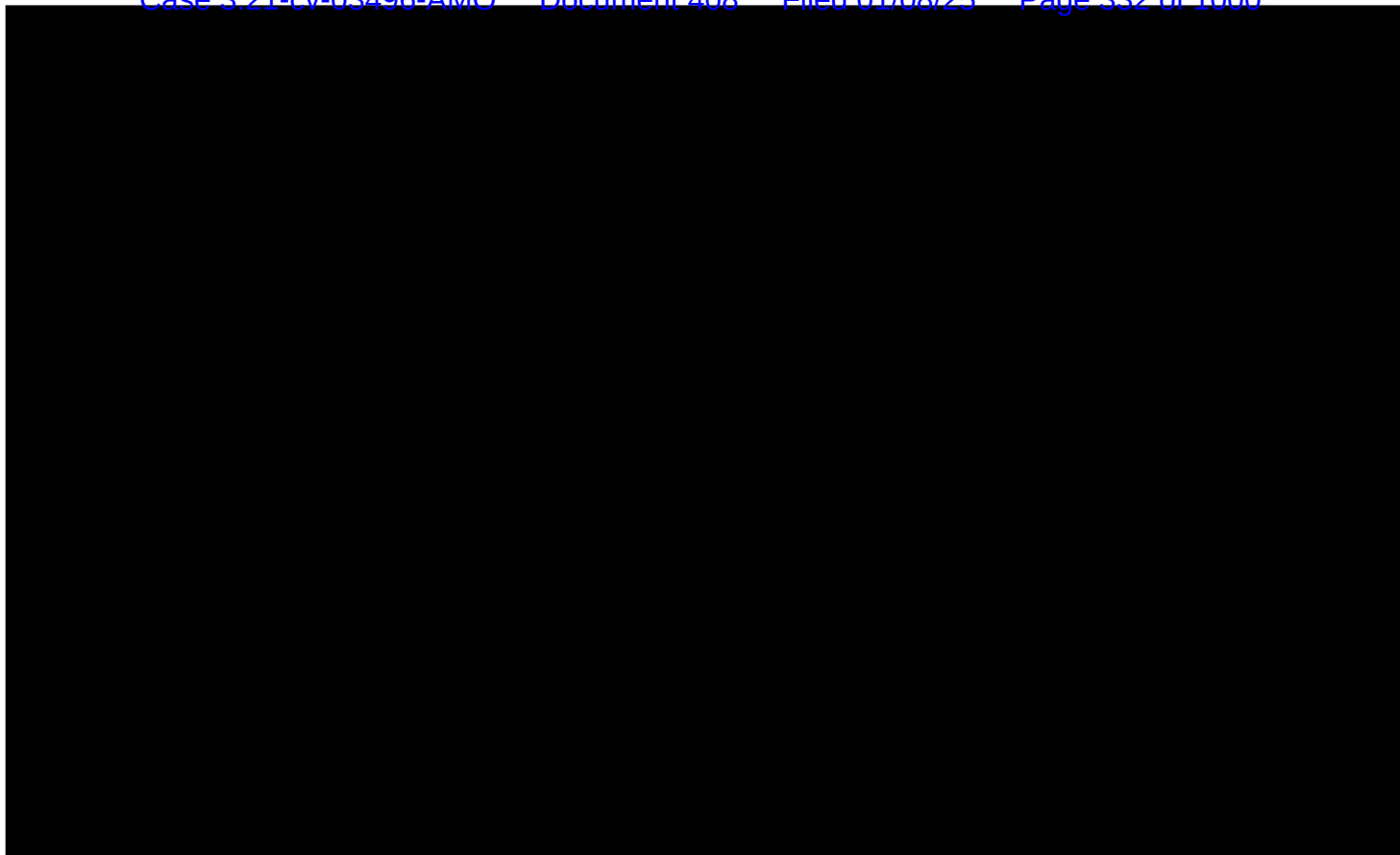


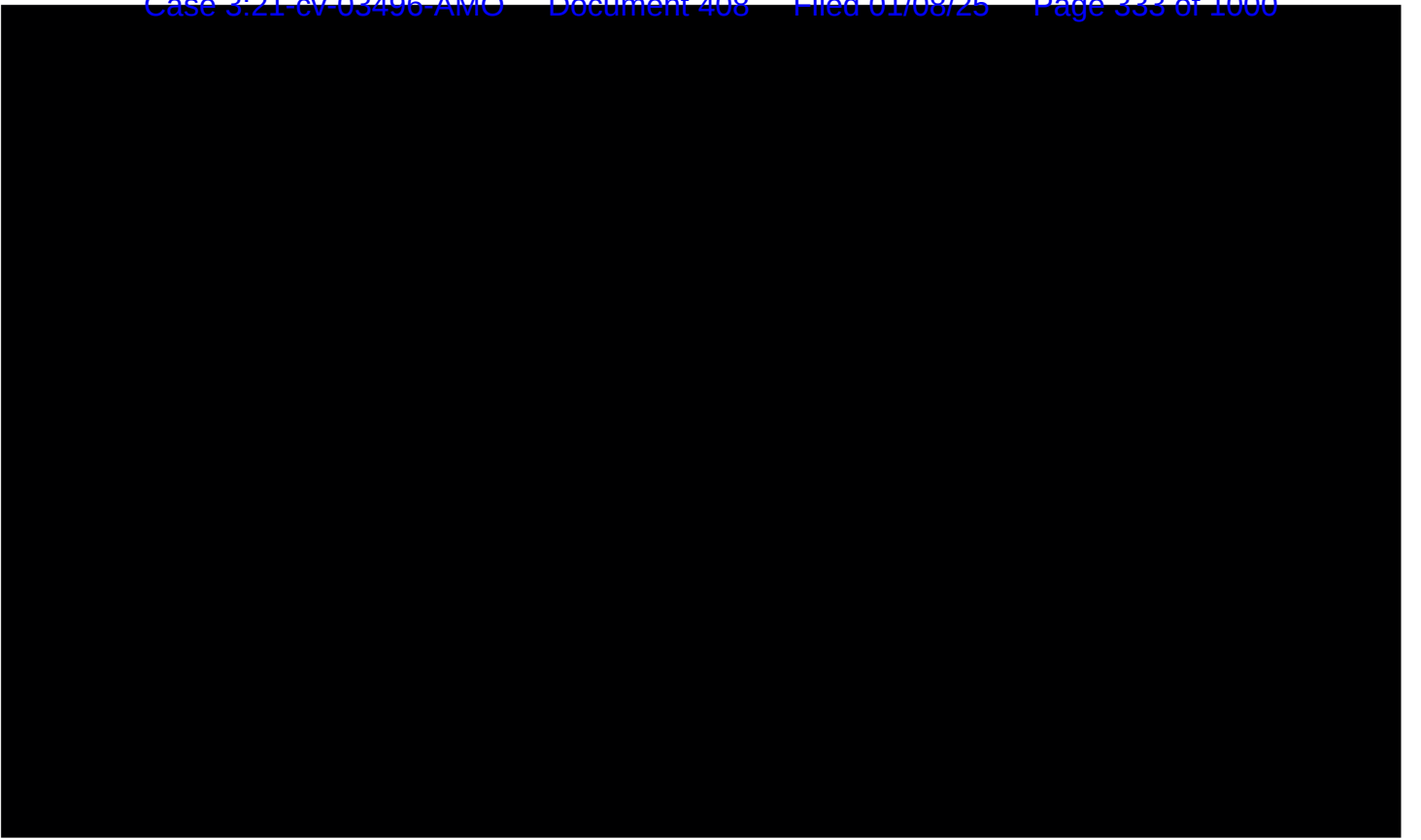


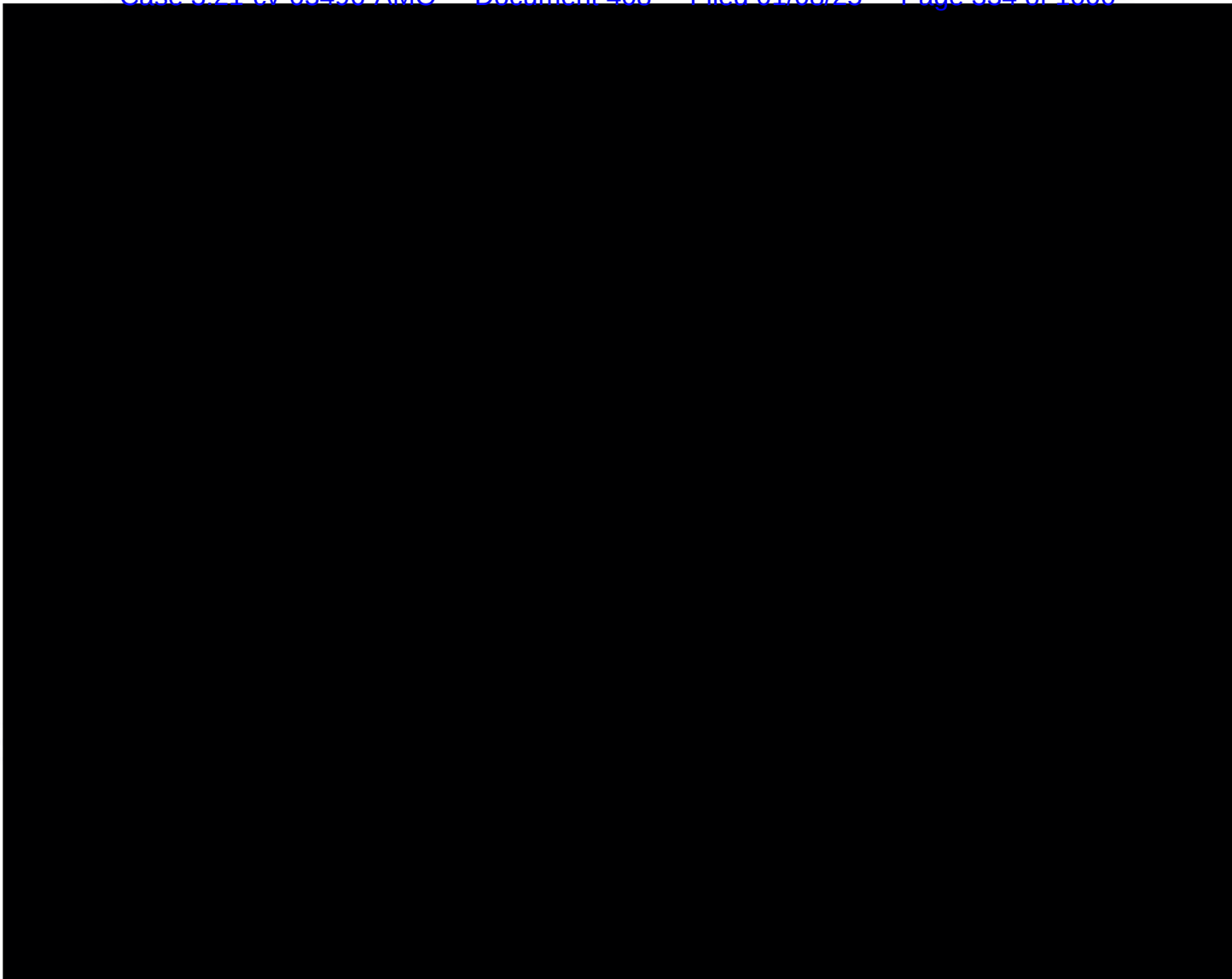


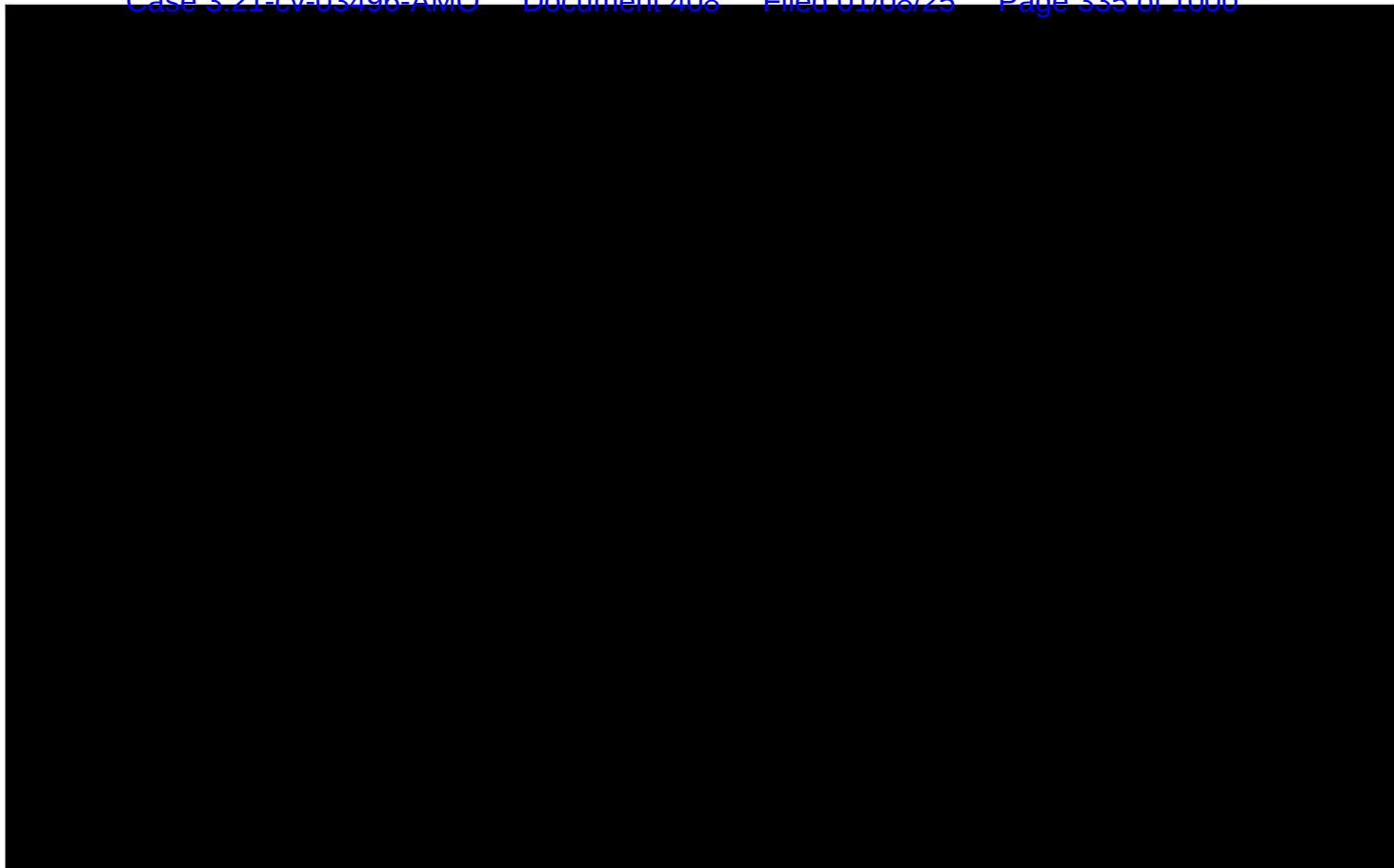


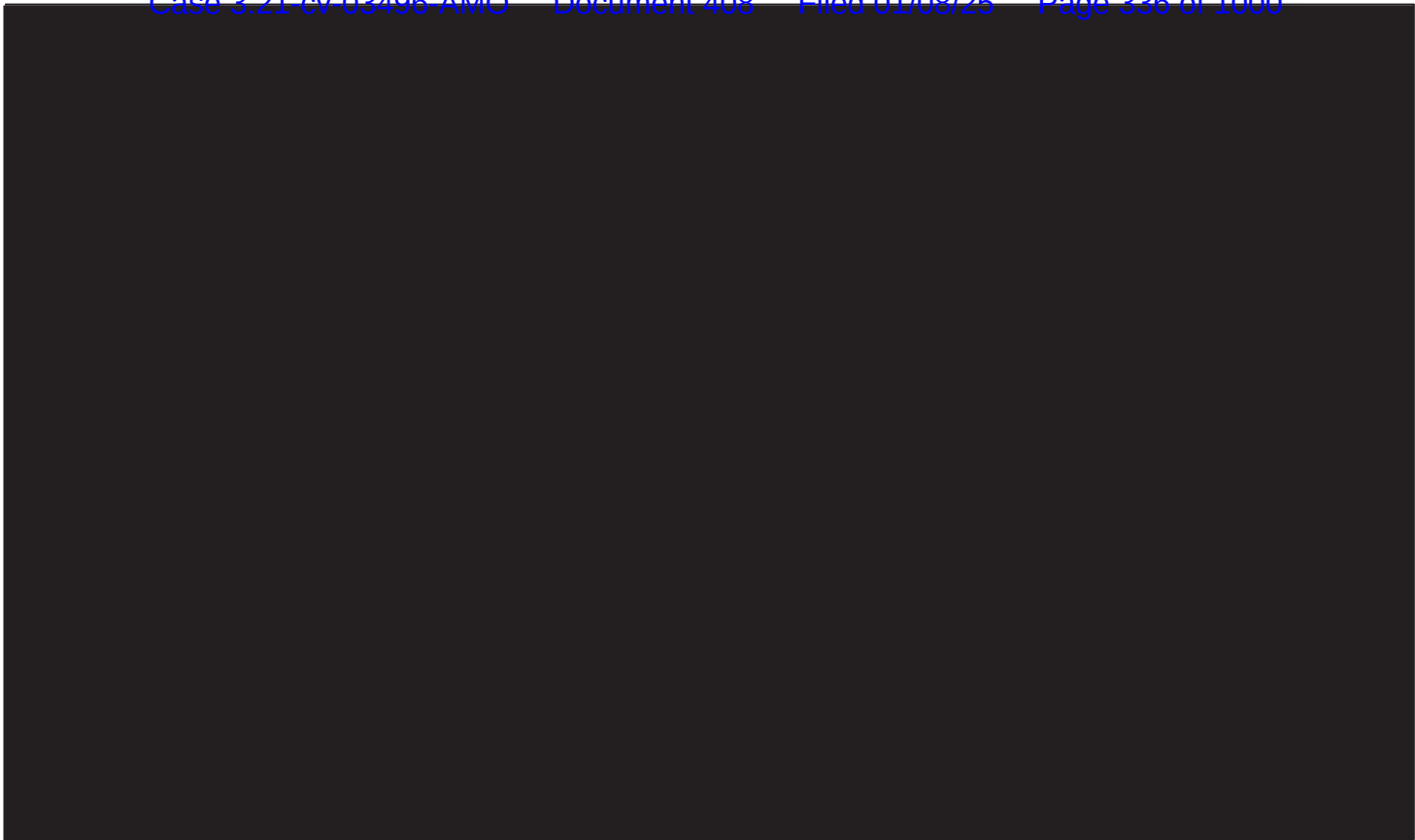


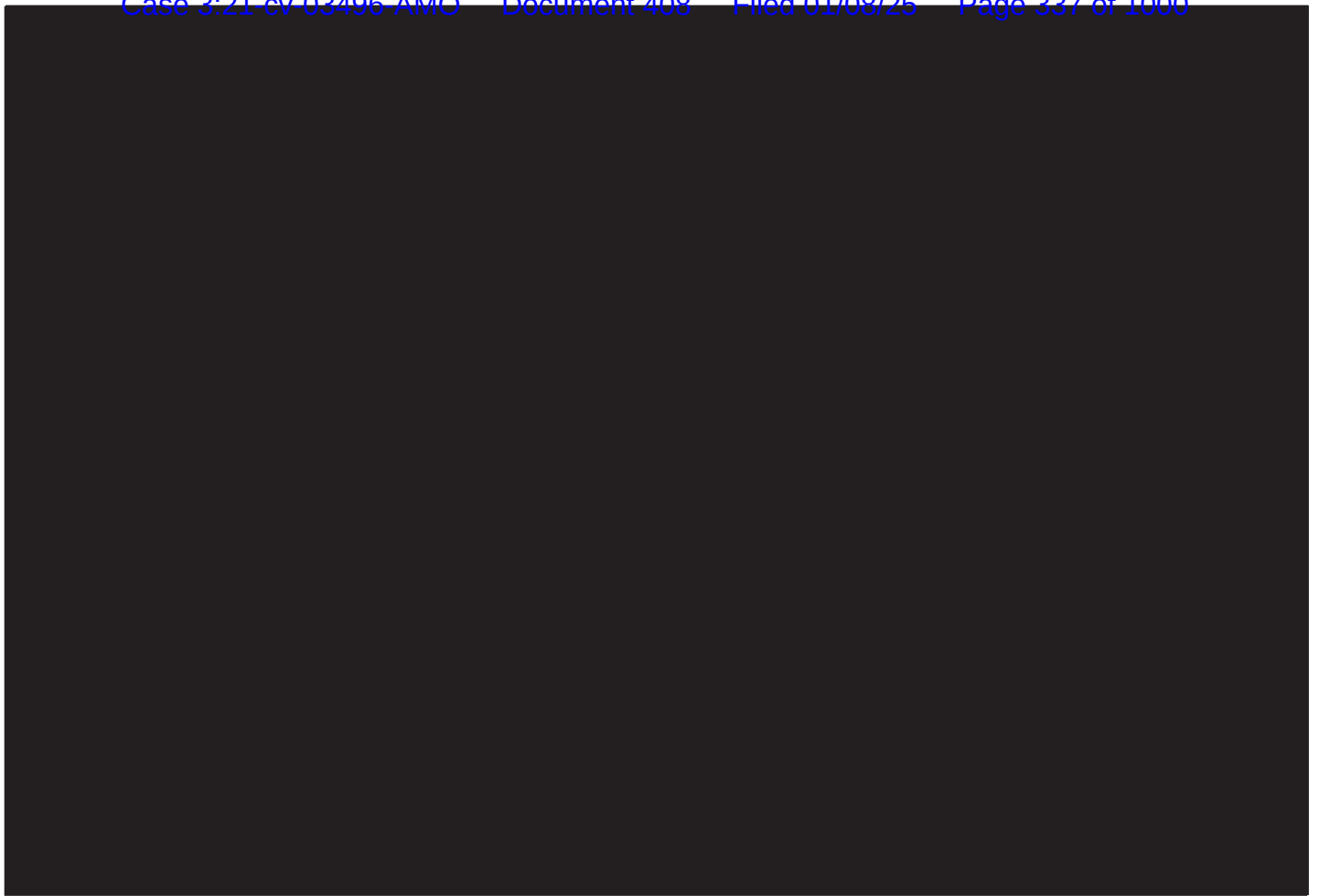


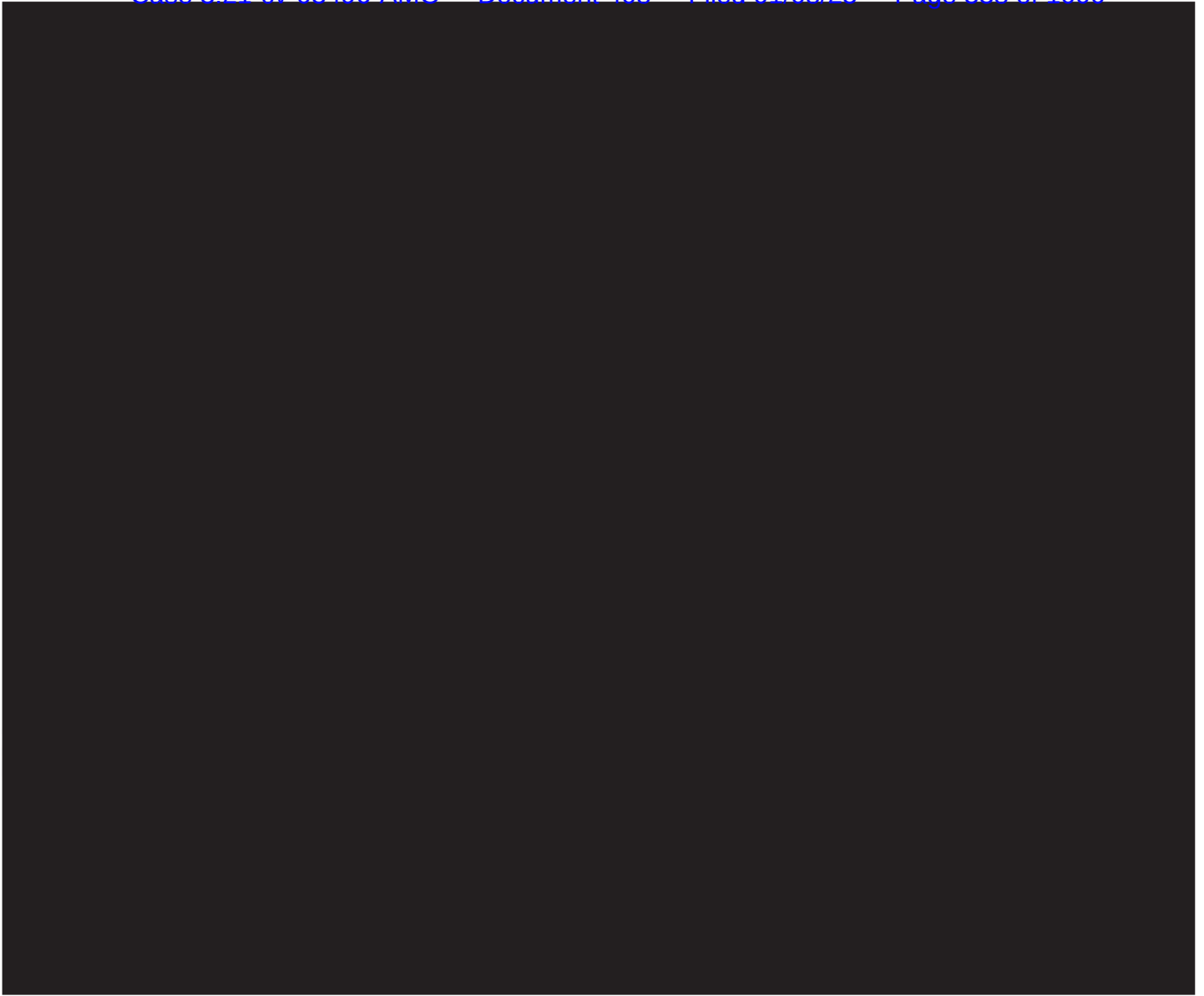






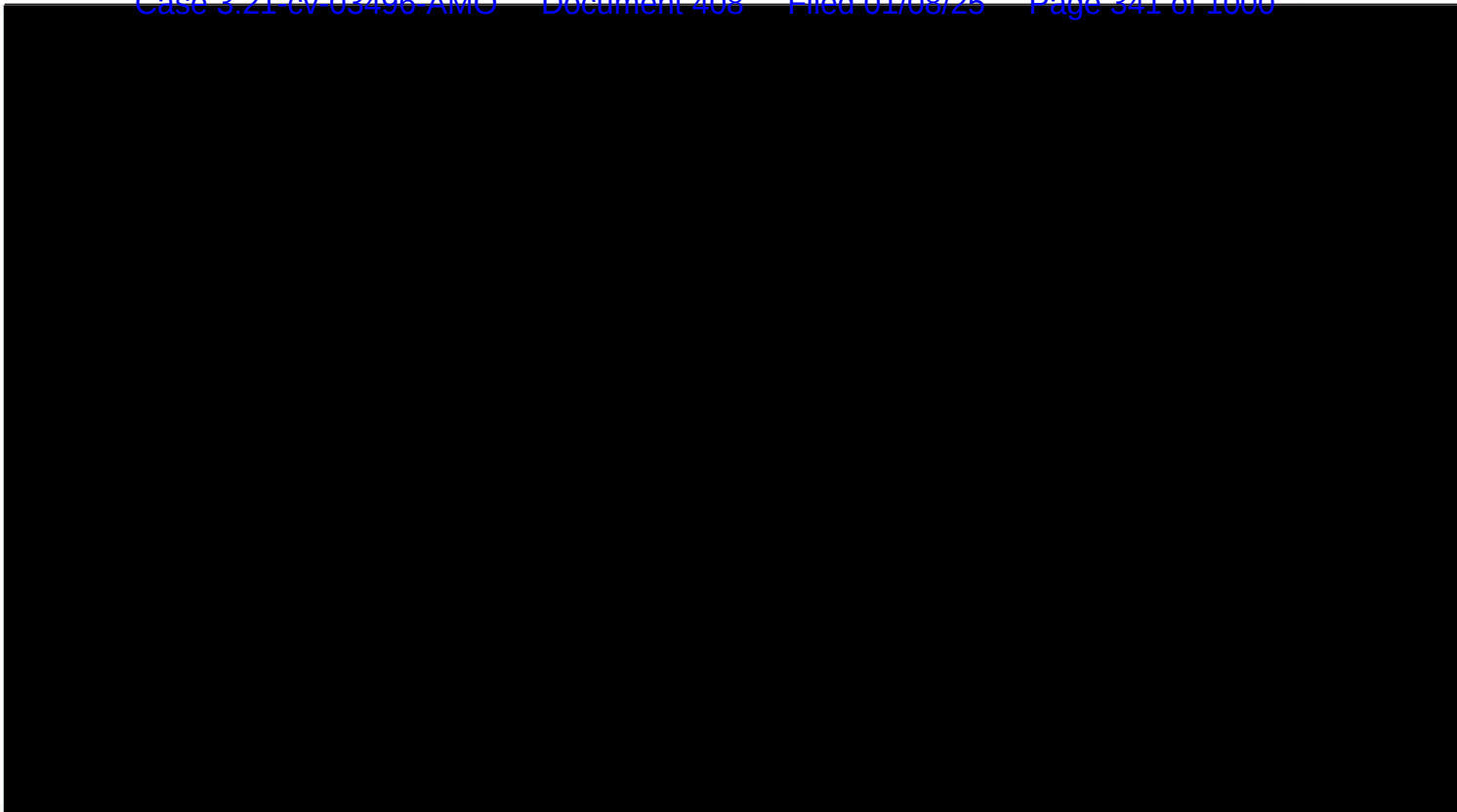




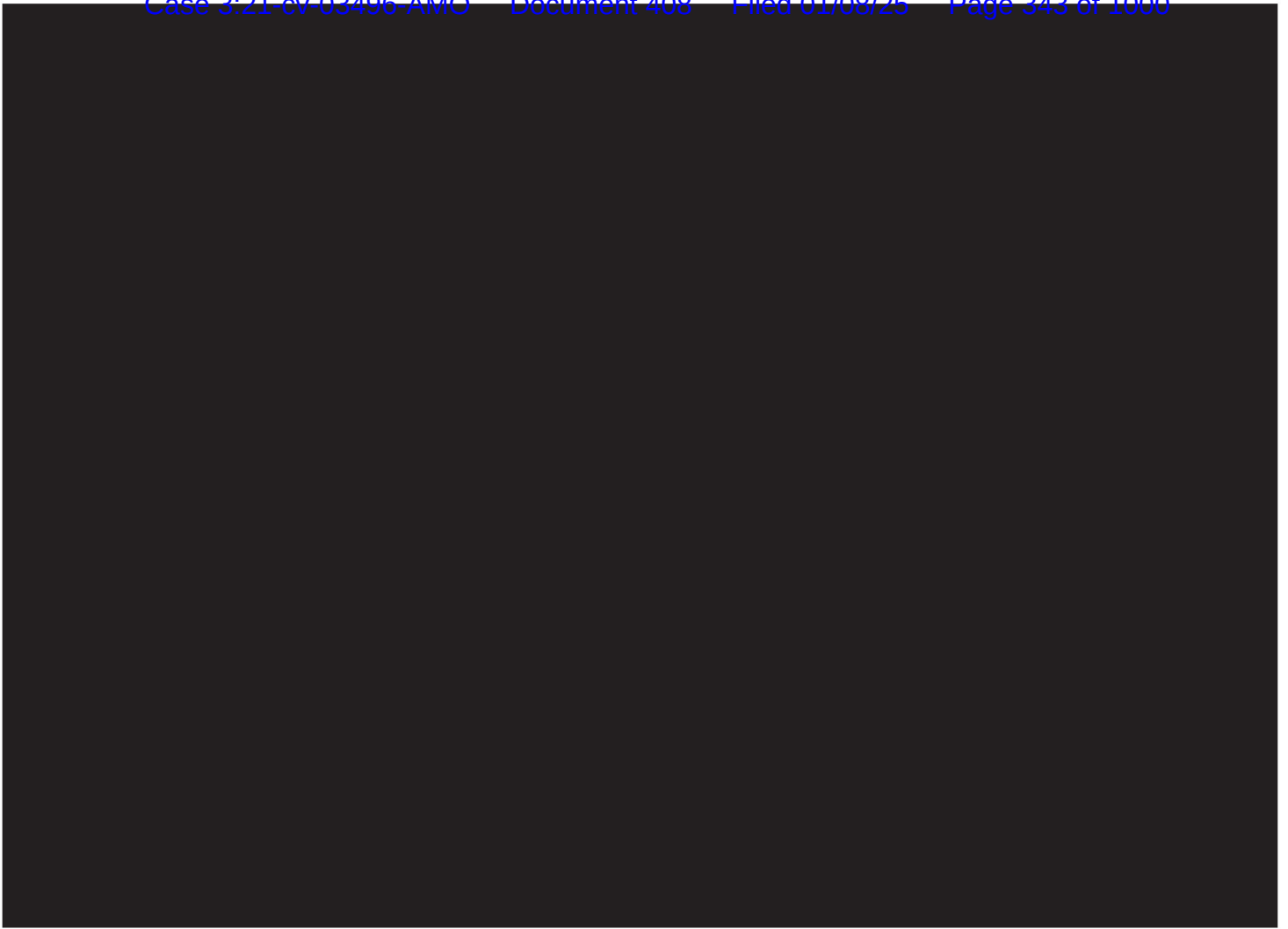


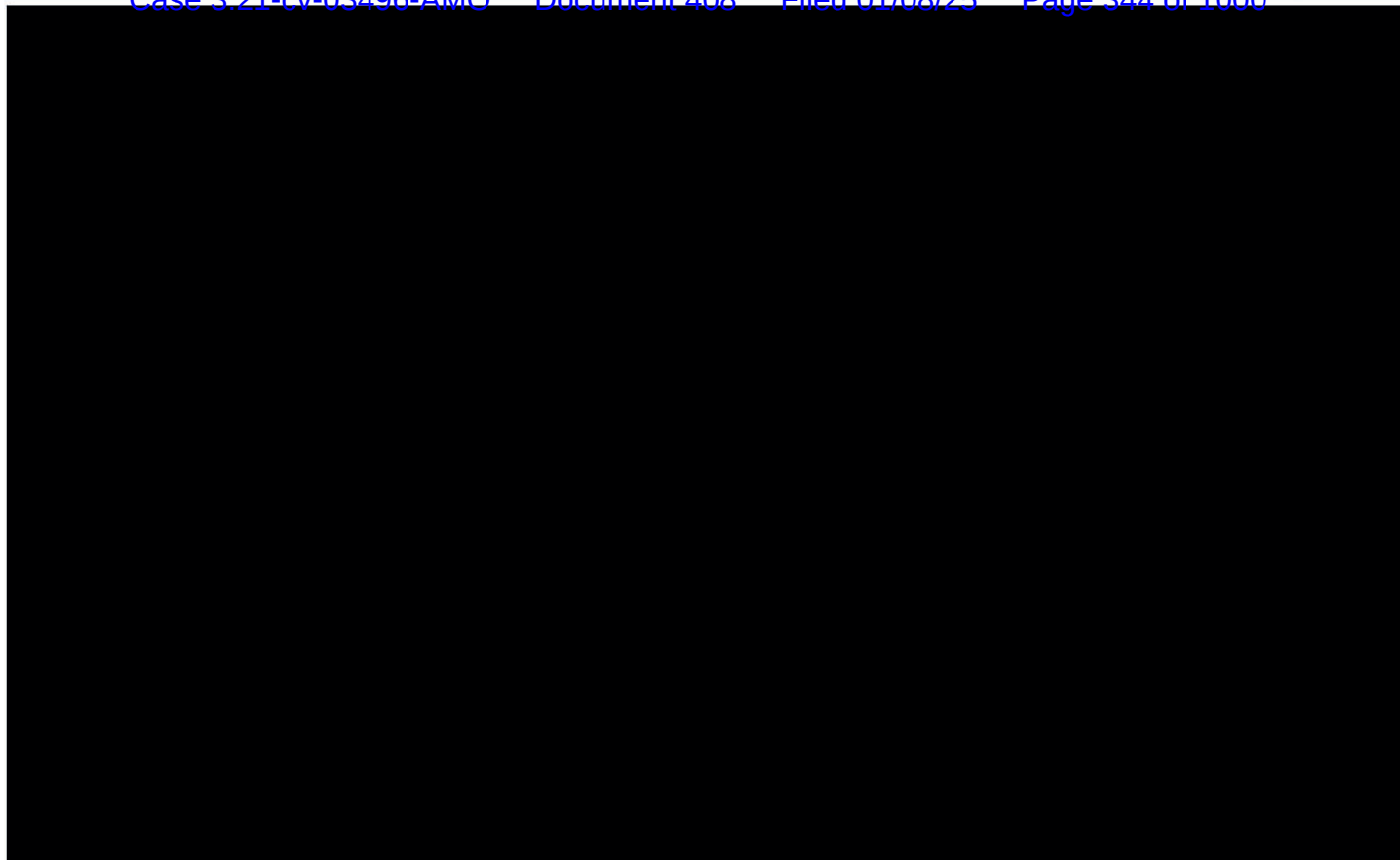


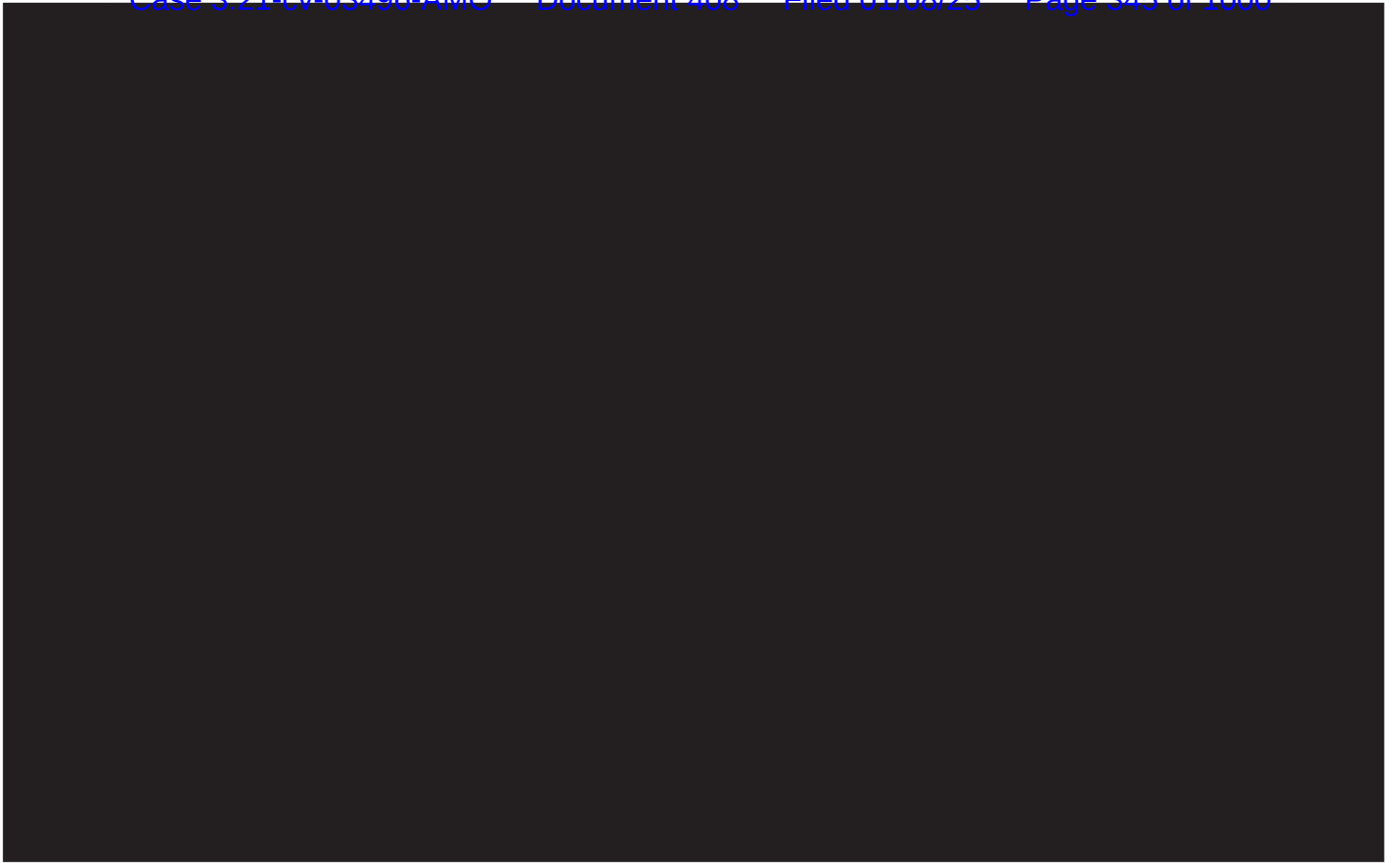


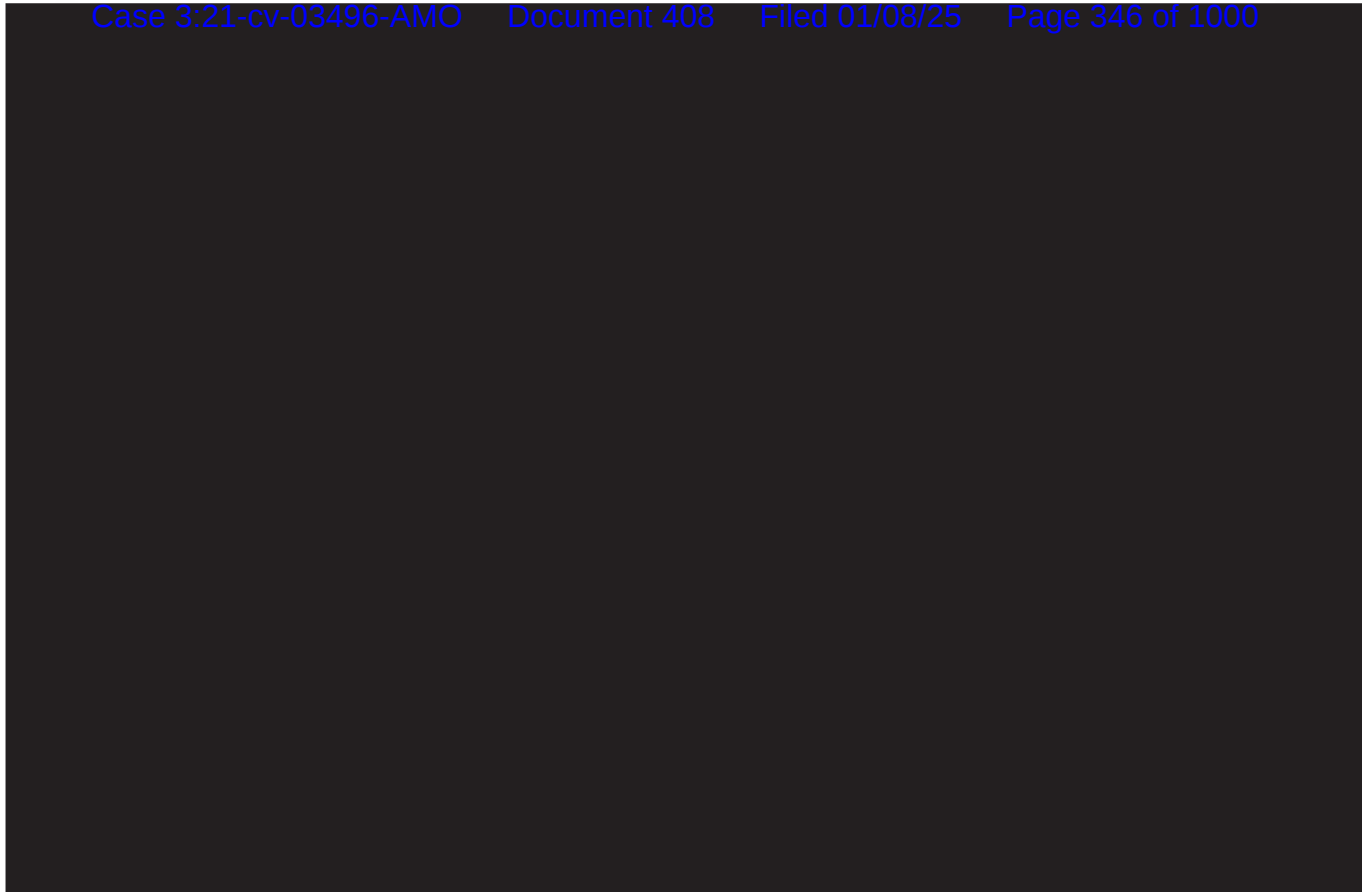












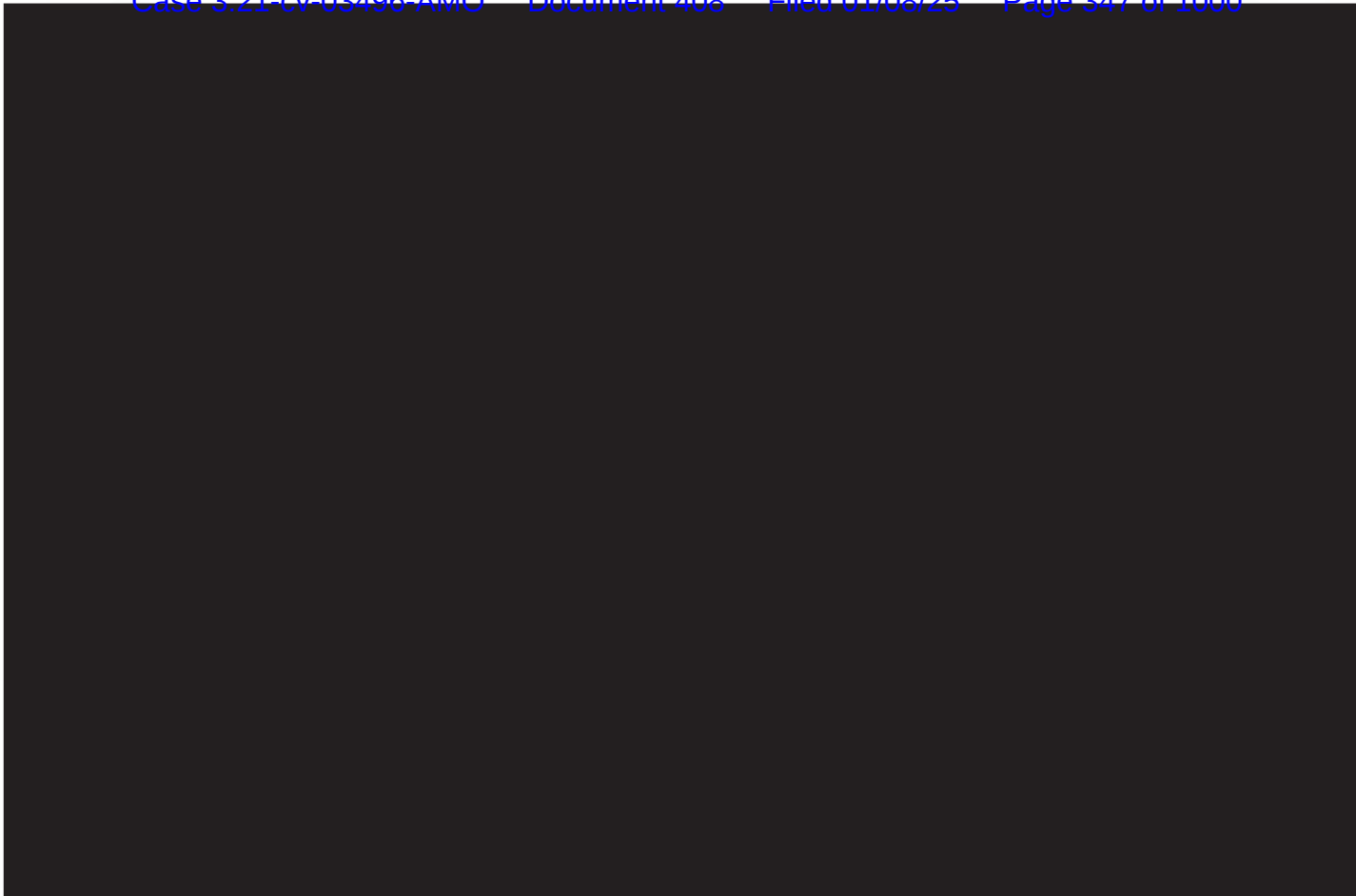


Exhibit 2

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4
5 REBOTIX REPAIR, LLC

6 Plaintiff,

7 vs. Case No. 8:20-CV-02274

8 INTUITIVE SURGICAL, INC.,

9 Defendant.

10 -----/

11
12
13 REMOTELY CONDUCTED

14 VIDEOTAPED DEPOSITION OF ANTONIO (AJ) INACAY

15 Pleasanton, California (Witness's location)

16 Tuesday, June 8, 2021

17
18
19
20
21 Stenographically reported by:
LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC
22 California CSR No. 10523
Washington CSR No. 3318
23 Oregon CSR No. 19-0458
Texas CSR No. 11318

24
25 Job No. 194227

1 June 8, 2021

2 9:09 a.m. PDT

3

4 Remotely conducted videotaped deposition

5 of ANTONIO (AJ) INACAY, before Lorrie L.

6 Marchant, a Certified Shorthand Reporter,

7 Registered Merit Reporter, Certified

8 Realtime Reporter, California Certified

9 Realtime Reporter, Certified Realtime

10 Captioner.

11

12

13

14

15

16

17

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19

20

21

22

23

24

25

1 A P P E A R A N C E S

2 (All appearances remotely via Zoom)

3

4 APPEARING ON BEHALF OF THE PLAINTIFF:

5 DOVEL & LUNER

6 BY: JULIEN ADAMS, ESQ.

7 LORENZO LAMO, LEGAL ASSISTANT

8 NAOMI CALDWELL, LEGAL ASSISTANT

9 201 Santa Monica Boulevard

10 Santa Monica, CA 90401

11

12 APPEARING ON BEHALF OF THE DEFENDANT:

13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM

14 BY: KAREN LENT, ESQ.

15 ALENA PERSZYK, ESQ.

16 One Manhattan West

17 New York, NY 10001

18

19 ALSO PRESENT:

20 Chris Jordan, Videographer

21 ---oOo---

22

23

24

25

1 PLEASANTON, CALIFORNIA (Witness's location)

2 TUESDAY, JUNE 8, 2021

3 9:09 a.m. PDT

4 THE VIDEOGRAPHER: Good morning. My name
5 is Chris Jordan, and I'm the legal videographer in
6 association with TSG Reporting.

7 Due to the severity of COVID-19 and
8 following the practice of social distancing, I will
9 not be in the same room with the witness. Instead,
10 I will record this videotaped deposition remotely.

11 The reporter, Lorrie Marchant, also will
12 not be in the same room and will swear the witness
13 in remotely.

14 Do all parties stipulate to the validity of
15 this video recording and remote swearing and that it
16 will be admissible in the courtroom as if it had
17 been taken following Rule 30 of the Federal Rules of
18 Civil Procedure and the state's rules where this
19 case is pending?

20 MR. ADAMS: Yes, on the plaintiff.

21 MS. LENT: Defendant stipulates.

22 THE VIDEOGRAPHER: Thank you.

23 This marks the beginning of the videotaped
24 deposition of AJ Inacay being taken in the matter of
25 Rebotix Repair, LLC, v. Intuitive Surgical, Inc.,

1 being held in the United States District Court,
2 Middle District of Florida, Tampa Division. This
3 deposition is being taken on June 8th, 2021, at
4 approximately 9:09 a.m.

5 My name is Chris Jordan with TSG Reporting.
6 The court reporter is Lorrie Marchant with TSG
7 Reporting.

8 Will counsel please state your name for the
9 record.

10 MR. ADAMS: This is Julien Adams. I'm
11 representing the plaintiff.

12 MS. LENT: Karen Lent from Skadden Arps on
13 behalf of Intuitive.

14 THE VIDEOGRAPHER: Thank you. Would --

15 MS. PERSZYK: Alena Perszyk from
16 Skadden Arps attending on behalf of defendant
17 Intuitive Surgical.

18 THE VIDEOGRAPHER: My apologies. Thank
19 you.

20 Will the court reporter please swear in the
21 witness.

22 ANTONIO INACAY,

23 FIRST DULY SWORN/AFFIRMED, TESTIFIED AS FOLLOWS:

24 EXAMINATION BY MR. ADAMS

25 ///

1 BY MR. ADAMS:

2 Q. Can you state your name for the record.

3 A. My real name is Antonio Inacay. My

4 nickname is AJ.

5 Q. Where do you work?

6 A. I'm not sure -- can you rephrase that

7 question?

8 Q. Sure. Where do you -- where do you work?

9 A. Where do I work?

10 Q. Yes.

11 A. I would have to look up the address, to be

12 frank. We have multiple buildings. So I just moved

13 into a new building.

14 Q. Do you have a job?

15 A. Yes.

16 Q. What is your job?

17 A. I'm a product manager for Intuitive.

18 Q. For whom do you work as a product --

19 project manager? Is it Intuitive?

20 A. Yes.

21 Q. So you work at Intuitive?

22 A. Yes.

23 Q. When did you start working at Intuitive?

24 A. I don't remember the exact date, to be

25 honest. I want to say it was around January 2019,

1 but I'm not completely sure.

2 Q. Before you worked at Intuitive, did you
3 work somewhere else?

4 A. Yes.

5 Q. Where did you work before you worked at
6 Intuitive?

7 A. Roche Sequencing Solutions.

8 Q. How long had you worked at Roche Sequencing
9 Solutions before you started working at Intuitive?

10 A. I would say around four to five years.

11 Q. When did you stop working at Roche
12 Sequencing Solutions?

13 A. I don't recall the date, to be honest. It
14 was -- yeah. I don't recall the exact date.

15 Q. Do you recall the year?

16 A. I want to say it's 2017 or 2018.

17 Q. Between the time that you stopped working
18 at Roche Sequencing Solutions and you started
19 working at Intuitive -- withdrawn. Let me ask a
20 better question.

21 How long -- well, when you stopped working
22 at Roche Sequencing Solutions, did you immediately
23 get the job at Intuitive, or was there a period of
24 time that transpired between the two jobs?

25 A. There was a period of time that transpired

1 between the two jobs.

2 Q. How much time transpired between the two
3 jobs?

4 A. I don't recall the times. Sorry.

5 Q. What did you do between the time that you
6 worked at Roche Sequencing Solutions and starting
7 your work at Intuitive with respect to employment?

8 A. I was in bed. I got into a car accident.

9 Q. When did you get into the car accident?

10 A. I don't recall the exact date. It was in
11 December of that year.

12 Q. December of what year?

13 A. I don't recall the actual year, so ...

14 Q. Was the car accident a bad accident?

15 A. I don't know what you mean by "bad." What
16 does "bad" mean?

17 Q. What was -- did you consider it a bad
18 accident?

19 A. I mean, that's kind of, like, subjective;
20 right? I don't really know what -- can you rephrase
21 what "bad" means?

22 Q. I'm trying to figure out whether or not you
23 considered it a bad accident.

24 A. In my opinion, yes, it was a bad accident.

25 Q. Why do you think it was a bad accident?

1 A. Because there were multiple cars involved,
2 and my car got spun around.

3 Q. Where did this accident take place?

4 A. On the 680, Highway 680.

5 Q. What city did this accident take place?

6 A. Sorry. I don't recall the actual city.

7 Q. Where in the country is Highway 680 where
8 the accident took place?

9 A. The country is the United States.

10 Q. In what state?

11 A. California.

12 Q. What part of California? Northern
13 California? Southern California?

14 A. I would say it's Northern California in the
15 Bay Area.

16 Q. When you were in the accident on
17 Highway 680 in the Bay Area, were you traveling
18 some -- to a particular place?

19 A. Yes.

20 Q. Where were you going to?

21 A. I was going back home.

22 Q. You were traveling home from where?

23 A. The rock climbing gym.

24 Q. From a rock climbing trip?

25 A. Rock climbing gym.

1 Q. Where was the rock climbing gym located?

2 A. In Fremont.

3 Q. And where did you live at the time?

4 A. In Pleasanton, California.

5 Q. How far from your home in Pleasanton was
6 the rock climbing gym in Fremont?

7 A. I'm not sure, to be honest. Sorry.

8 Q. How long did it take you to get from the
9 rock climbing gym in Fremont to your home in
10 Pleasanton?

11 A. I don't recall how long it would take.

12 Q. Tell me everything you can recall about how
13 the accident happened.

14 A. I actually don't know like the root cause
15 of it. I can tell you from what I recall. My car
16 being hit from behind. I spun around. They had to
17 use the -- I'm not sure what the actual tool is
18 called, but like the jaws of life to get me out.
19 And I went to an ambulance, and I went to the
20 hospital.

21 Q. Did you suffer injuries?

22 A. Can you define "injuries" for me?

23 Q. I cannot.

24 Were you injured?

25 A. Yes.

1 Q. How were you injured?

2 A. My neck was injured.

3 Q. Any other injuries?

4 A. Not that I recall, no.

5 Q. Did you suffer any injuries to your brain?

6 A. No.

7 Q. Did you suffer any injuries from that
8 accident that would cause you to forget things?

9 A. Can you -- can you repeat that, please?

10 Sorry.

11 Q. Sure.

12 Any injuries from that accident that would
13 cause you to forget things?

14 A. I'm not a medical doctor, so I can't -- I'm
15 not really sure I can answer that appropriately.

16 Q. Has anyone, including a doctor, diagnosed
17 with you any injuries from that accident that would
18 cause you to not have a clear recollection of
19 things?

20 A. No.

21 Q. How long were you in the hospital?

22 A. I don't -- I don't recall the dates, or the
23 hours, but it was definitely a few hours.

24 Q. After you were discharged, did you go home?

25 A. Yes.

1 Q. And then at the time that you got into the
2 accident -- withdrawn. Better question.

3 When you were traveling from the rock
4 climbing gym when you got into the accident on
5 Highway 680, were you employed at that time?

6 A. Yes.

7 Q. Where were you working at that time?

8 A. Roche Sequencing Solutions.

9 Q. After the accident and you went to the
10 hospital and then you were discharged after a couple
11 of hours and you went home, were you bedridden for a
12 period of time?

13 A. Yes.

14 Q. How long were you bedridden?

15 A. I don't recall.

16 Q. Were you bedridden for a matter of days or
17 weeks or months?

18 A. Days.

19 Q. Now, did you at some point stop being
20 bedridden and then -- withdrawn. Better question.

21 Did you go back to work after the accident
22 at Roche Sequencing Solutions?

23 A. I don't recall, honestly.

24 Q. You don't remember whether or not, after
25 your accident and after you stopped being bedridden

1 for a few days, if you were still working at Roche

2 Sequencing Solutions.

3 Is that what your testimony is?

4 A. Yes.

5 Q. Did you lose -- were you fired from Roche

6 Sequencing, or did you quit?

7 A. I quit.

8 Q. Why did you quit?

9 A. To work at Intuitive.

10 Q. You quit Roche Sequencing Solutions to work

11 at Intuitive; correct?

12 A. I was offered a position at Intuitive. I

13 applied to there, so yes.

14 Q. Did you apply to Intuitive before or after

15 your accident?

16 A. Before.

17 Q. And when did you get offered the position

18 at Intuitive; before or after your accident?

19 A. I don't recall.

20 Q. On the day that you had your accident, did

21 you have the offer from Intuitive?

22 A. I don't recall.

23 Q. On the day that you stopped being

24 bedridden, did you have an offer from Intuitive?

25 A. I don't recall.

1 Q. How did you get the offer from Intuitive?

2 Was it made to you orally? in person? in writing?

3 Any of those?

4 A. Yes.

5 Q. Which one?

6 A. Orally at first and then written.

7 Q. When it was made to you orally, was it in
8 an in-person conversation, or was it in writing?

9 A. Neither.

10 Q. Wait. I'm sorry. That was horrible.

11 When you got the oral offer, was it in
12 person or on the telephone?

13 A. On the telephone.

14 Q. And where were you located when you got the
15 telephonic offer from Intuitive?

16 A. I was at a restaurant.

17 Q. What restaurant, sir?

18 A. I don't recall the name.

19 Q. Where was the restaurant located?

20 A. In Dublin.

21 Q. Were you at the restaurant during the
22 morning, the afternoon, or the evening?

23 A. Afternoon.

24 Q. Was it the afternoon for lunch, or was it
25 the afternoon for dinner?

1 A. Lunch.

2 Q. Were you at this restaurant for lunch by
3 yourself, or were you there with other people?

4 A. With other people.

5 Q. Were these persons coworkers or
6 non-coworkers?

7 A. Coworkers.

8 Q. At the time that you got the offer from
9 Intuitive, you were at lunch with coworkers from
10 Roche Sequencing Solutions?

11 A. Yes.

12 Q. How long after you got that oral offer on
13 the telephone did you have your car accident?

14 A. I don't recall.

15 Q. Was it a matter of months?

16 A. No.

17 Q. Was it a matter of weeks?

18 A. I don't recall.

19 Q. Was it a matter of days?

20 A. Yes.

21 Q. Did you get the offer more than -- more
22 than four days before -- more than five days before
23 your accident?

24 A. I don't recall.

25 Q. Did you get the offer the day before your

1 accident?

2 A. I don't recall.

3 Q. Did you get the offer on the same day of

4 your accident?

5 A. No.

6 Q. Now, did Intuitive follow up that oral

7 offer with a written offer?

8 A. Yes.

9 Q. Was that sent you to by e-mail or was it

10 mailed to you through the postal service, or some

11 other written method?

12 A. E-mail.

13 Q. How long after your oral offer did you get

14 the written e-mail offer from Intuitive?

15 A. I don't recall.

16 Q. Now, you were offered a job at Intuitive

17 while you were working at Roche Sequencing. At some

18 point thereafter, you got into this accident and you

19 were bedridden for a couple of days.

20 Do you -- I don't remember, can you tell us

21 how long you were bedridden?

22 A. I don't remember the exact duration, but it

23 was days.

24 Q. Was it a week?

25 A. I don't recall.

1 Q. Was it two weeks?

2 A. No.

3 Q. At some point, you were able to move around
4 after your accident; right?

5 A. Yes.

6 Q. You were no longer bedridden; right?

7 A. Yes.

8 Q. Did you have people come and help you while
9 you were -- withdrawn.

10 When you were bedridden, did you live by
11 yourself, or did you live with others?

12 A. I lived with others -- other.

13 Q. And were you assisted by this other person
14 that you lived with so that you can do different
15 things in the home while you were bedridden, like
16 eat and bathe or other things?

17 A. I don't recall.

18 Q. Did someone have to help you get out of bed
19 to go to the bathroom, for example?

20 A. No.

21 Q. When did you start working at Intuitive?
22 What year?

23 A. I don't recall the year.

24 Q. It was sometime in 2019; right?

25 A. I was working at Intuitive in 2019. Or I'm

1 still working at Intuitive, but ...

2 Q. Mr. Inacay, have you ever been diagnosed
3 with any type of ailment that affects your ability
4 to recall events?

5 A. Not that I'm aware of, no.

6 Q. Do you consider yourself to have a good
7 memory?

8 A. What does "good memory" mean?

9 Q. Well, I want to know from you whether or
10 not you consider yourself to have a good memory.

11 A. Sorry. That -- I still don't understand
12 what you mean. Are you asking for my opinion or ...

13 Q. I want to know from you whether or not you
14 consider yourself to have a good memory.

15 A. In my opinion, I can remember, not the
16 detailed pieces, but I can remember vaguely events.

17 Q. Is there a reason why you can't recall the
18 year that you started working at Intuitive?

19 A. I don't remember it off the top of my head.
20 It's been however many years now. If you would like
21 me to check, I could check.

22 Q. Well, no. When you say "it's been many
23 years now," what do you mean by "many years"?

24 A. I would say it's going on to three years
25 now.

1 Q. So is it your -- is it the case that things
2 that occurred three years in the past become fuzzy
3 in your mind?

4 A. Can you rephrase that? Sorry.

5 Q. Is it the case that things that occurred,
6 events that occurred, three years in the past, are
7 those things fuzzy in your memory in your mind?

8 A. Sorry, what does "fuzzy" mean?

9 Q. Unclear.

10 A. So can you repeat that one more time,
11 please.

12 Q. Is it the case that things that occurred
13 three years in the past, those things become
14 unclear, fuzzy, in your mind?

15 A. They could, yes.

16 Q. The date -- withdrawn.

17 The month that you started working at
18 Intuitive, that month is fuzzy and unclear in your
19 mind. Is that your testimony, sir?

20 A. No. I remember the month was in January.

21 Q. So you are clear in your mind that you
22 started working at Intuitive in January; right?

23 A. Yes.

24 Q. Now, is the year that you started working
25 at Intuitive, is that fuzzy in your mind?

1 A. Currently, yes. If I look at the calendar,
2 I can tell you.

3 Q. You know that you started working at
4 Intuitive in the month of January; right?

5 A. Yes.

6 Q. Did you start working at Intuitive in the
7 month of January 2021?

8 A. Nope.

9 Q. Did you start working at Intuitive in month
10 of January 2020?

11 A. Nope.

12 Q. Did you start working at Intuitive in the
13 month of January 2019?

14 A. Yes.

15 Q. Did you have to look at a calendar to give
16 me that answer?

17 A. No.

18 Q. Did you have to look at any documents to
19 give me that answer?

20 A. No.

21 Q. Explain why it took me so long to get you
22 to testify that you started working at Intuitive in
23 January 2019.

24 MS. LENT: Object to the form.

25 You can answer.

1 THE WITNESS: Answer? Because I don't know
2 it off the top of my head. I want to be clear when
3 I give the year.

4 BY MR. ADAMS:

5 Q. Well, when you say you don't know it off
6 the top of your head, what is it that you didn't
7 know off the top of your head? The year and the
8 month that you started working at Intuitive, or the
9 exact date that you started?

10 A. The year.

11 Q. You did not know off the top of your head
12 that you started working at Intuitive in 2019; is
13 that your testimony, Mr. Inacay?

14 MS. LENT: Objection.

15 You can answer unless I tell you not to,
16 AJ.

17 THE WITNESS: Can you repeat the question,
18 please.

19 BY MR. ADAMS:

20 Q. Is it your testimony, sir, that you did not
21 know off the top of your head that you worked -- you
22 started working at Intuitive in the year 2019?

23 MS. LENT: Objection.

24 THE WITNESS: Yes.

25 ///

1 BY MR. ADAMS:

2 Q. And in order for you to get that
3 recollection, we have to sort of work through the
4 different years in which you did not work at
5 Intuitive; right?

6 A. Yes.

7 Q. When you started working at Intuitive in
8 January 2019, did you have a title?

9 A. Yes.

10 Q. What was your title when you started
11 working at Intuitive?

12 A. Instrument and accessories product manager.

13 Q. Your testimony sort of broke up there for
14 me. Can you repeat that?

15 A. From what I recall, the title was
16 instrument and accessories product manager,
17 services.

18 Q. The first word there still is unclear to
19 me.

20 A. Instrument and accessories services product
21 manager.

22 Q. To the extent that I see the acronym
23 I&A Services in the documents, I&A stands for
24 instrument and accessories?

25 A. Yes.

1 Q. When you started working at Intuitive and
2 you were given that title, did it come with some job
3 responsibilities?

4 A. Yes.

5 Q. What were your job responsibilities?

6 A. I primarily supported the instrument and
7 accessories support team and their initiatives.

8 Q. What did the I&A support team do?

9 A. I'm not an I&A specialist, but from my
10 understanding, they would go on to accounts,
11 customer accounts, and educate them on cleaning and
12 sterilizing and disinfecting our instruments.

13 Q. When you say "they go to customer
14 accounts," who are the customers that they would go
15 to?

16 A. I don't know their specific accounts, sir.

17 Q. Generally, what customers did they support?

18 A. Hospital accounts.

19 Q. When you say that you supported the I&A
20 support team, in what way did you support the I&A
21 support team?

22 A. They had initiatives that they wanted to
23 start, and projects, and I would work on them from
24 the global end.

25 Q. When you started working at Intuitive, what

1 initiative did the I&A support team have?

2 A. There were many initiatives. Some were
3 validating trays. Some were improving our
4 instruments for -- to make it cleanable and able to
5 disinfect easier, those types of things.

6 Q. You said you worked from the "global end."
7 What did you mean by you worked from the global end?

8 A. The corporate end. So we support all of
9 the global teams, so ...

10 Q. In what way did you support those
11 initiatives?

12 A. Can you repeat that? Sorry.

13 Q. In what way did you support those
14 initiatives?

15 A. So I was a product manager for those
16 projects. So made sure that the products that we
17 were helping to create were in line with what the
18 I&A support team were envisioning.

19 Q. Before you started working at Intuitive,
20 did you work as a project manager doing the same
21 type of things that you would be doing at Intuitive?

22 A. Sorry, can you repeat that?

23 Q. Sure.

24 Before you started working at Intuitive,
25 did you work at any other job in which you had a

1 similar title and role?

2 A. Yes.

3 Q. And was that the work -- was that at the
4 job that you worked at just before, which was Roche
5 Sequencing Solutions?

6 A. Yes.

7 Q. Did you report to anyone as a project
8 manager?

9 A. A project manager, sir?

10 Q. Did you -- as the project manager at
11 Intuitive, did you report to anyone?

12 A. Sorry, sir, I wasn't ever a project manager
13 at Intuitive. "Project."

14 Q. Your title was -- oh, I'm sorry. I'm
15 saying "project."

16 In your role as product marketing
17 manager -- let me make sure I got that right here.

18 In your role as the product marketing
19 manager, did you report to anyone?

20 A. Yes.

21 Q. Who did you report to?

22 A. Patrick Swindon.

23 Q. Spell his last name for me.

24 A. S-W-I-N-D-O-N.

25 Q. Do you still report to Mr. Swindon?

1 A. No.

2 Q. Do you -- are you still a product marketing
3 manager supporting the I&A servicing team?

4 A. No.

5 Q. When did you stop in that role?

6 A. I don't recall.

7 Q. What is your current role? What is your
8 current title?

9 A. Product manager customer experience.

10 Q. Did that change in title come with a change
11 in responsibilities?

12 A. Yes.

13 Q. What was the change?

14 A. I no longer supported the I&A support team.
15 I support the other services teams.

16 Q. What services teams do you support
17 currently?

18 A. Our technical support teams, our customer
19 success teams, our customer service teams, field
20 service teams.

21 Q. Did the change in your title come with a
22 change in salary?

23 A. Yes.

24 Q. Did your salary go up or down when you
25 became product manager customer experience -- for

1 customer experience?

2 A. Up.

3 Q. You got a raise?

4 A. Yes, sir.

5 Q. Was it a significant raise to you?

6 A. In my opinion, no.

7 Q. Tell me what your salary was and what it
8 was raised to.

9 A. I don't recall off the top of my head what
10 the salary is, sir.

11 Q. You don't know how much money you're
12 making?

13 A. No, sir.

14 Q. Do you get paid -- well, are you paid
15 hourly?

16 A. No.

17 Q. Is your salary a yearly salary? That is
18 you get paid X amount of dollars per year?

19 A. Yes.

20 Q. When you were the product marketing manager
21 supporting the I&A team, how much money did you make
22 per year?

23 A. I don't recall the exact figure, but it was
24 anywhere between 118- to, I want to say, 125,000 per
25 year.

1 Q. When your salary was increased, how much
2 was it increased per year?

3 A. Again, I don't recall the exact figure, but
4 it's more than 125,000. Around 130,000.

5 Q. In what year did you start earning \$130,000
6 a year? Withdrawn. Let me ask a better question.

7 In what year did you start making around
8 \$130,000 per year?

9 A. 130,000, sir? Is that what you said?

10 Q. Yes.

11 A. This year.

12 Q. I missed the answer.

13 A. This year, sir.

14 Q. You started making around \$30,000 per year
15 in be 2021?

16 A. No, sir. You said 30,000.

17 Q. No. What I'm trying to get from you,
18 Mr. Inacay, is I'm trying to figure out when it was
19 that you got the promotion to product manager
20 customer experience.

21 Was it in 2020? Was it in 2019? Was it in
22 2021?

23 A. I'm sorry, sir, it wasn't a promotion. It
24 was just a change in title.

25 Q. That came with an increase in salary?

1 A. Yes, sir.

2 Q. When was it that you got the change in
3 title and increase in salary?

4 Was it in 2020? 2019? 2021?

5 A. 2021.

6 Q. Between January of 2019 and 2021 when you
7 got the change in title, you reported to Mr. Patrick
8 Swindon; correct?

9 A. Yes, sir.

10 Q. During the time that you were the product
11 marketing manager supporting the I&A team, did you
12 have people that reported to you?

13 A. No.

14 Q. During that time, was there any other
15 person at Intuitive that had the same title and job
16 responsibilities that you had?

17 A. Not that I'm aware of, no.

18 Q. When you started working at Intuitive in
19 2019 and you were supporting the I&A team, what
20 instruments did you help that team fulfill their
21 initiatives for?

22 A. Sorry, can you repeat that one more time?

23 Q. Sure.

24 When you started working at Intuitive when
25 you were supporting the I&A team, you said that

1 they -- their initiatives included education and
2 cleaning and sterilizing, disinfecting instruments.
3 And I want to know what you meant by "instruments."

4 What instruments were you talking about
5 there?

6 A. So it was in general instruments. It was
7 mostly cleaning and sterilization of those
8 instruments. They're not -- there wasn't any
9 specific instruments that I worked on, sir.

10 Q. Yeah, I'm trying to get a sense of what
11 instruments you're talking about. When you said
12 "cleaning and sterilizing instruments," what are
13 these instruments that you're referring to?

14 A. The da Vinci instruments.

15 Q. What da Vinci instruments are you referring
16 to?

17 A. I'm not sure -- I'm not sure what you mean.
18 Do you need specific instruments, sir, or ...

19 Q. Yes. Give me whatever instruments that you
20 are aware of that you were supporting as a product
21 manager.

22 A. So sorry. Again, I didn't work
23 specifically on instruments development. It was
24 primarily, okay, how do we -- how do we make it so
25 that these instruments in general are able to be

1 cleaned, sterilized, and disinfected easily. So I'm
2 not sure if that's clear or not.

3 Q. That's very clear to me. What's unclear is
4 what instruments you're talking about when you said
5 that we have to make sure that these instruments are
6 able to be cleaned, sterilized, and disinfected.

7 A. It's the reusable instruments.

8 Q. That first word that you said there, can
9 you spell it?

10 A. R-E-P-O-S-A-B-L [sic].

11 Q. I'm hearing reusable?

12 A. Reusable, R-E-P-O-S-A-B-L [sic].

13 Q. And what type of instruments did you
14 support that were reusable instruments?

15 Were there model numbers for them? Were
16 there names for those instruments?

17 A. I don't recall all the projects, but they
18 were primarily the Gen 4. So da Vinci X/Xi
19 instruments.

20 Q. Were these instruments instruments that
21 were being used at hospitals to do surgeries?

22 A. Yes.

23 Q. Were these instruments instruments that
24 were being used at hospitals in connection with
25 robots?

1 A. Yes.

2 Q. Before you started working at Intuitive,
3 did you ever work at any other company where you
4 were overseeing a marketing or supporting a team
5 that involved robots that were used in surgeries?

6 A. No.

7 Q. In order for you to do your job as the
8 product marketing manager supporting the I&A team,
9 did you have to get -- did you have to learn about
10 any aspects of the instruments that that team was
11 supporting?

12 A. Yes.

13 Q. Describe that learning process for me.

14 A. Sure.

15 So initially when I started working, I
16 received clinical sales training for our systems;
17 how they're used, and how are our instruments used
18 in cases.

19 Q. How long did you train with respect to
20 learning how the instruments were used?

21 A. I don't recall the -- like the specific
22 amount of months, but it was anywhere between three
23 to five months.

24 Q. Where did that clinical sales training take
25 place?

1 A. Remotely and in Sunnyvale.

2 Q. Were those clinical sales training sessions
3 being run by one person, or was it a group of people
4 that trained you?

5 A. Group of people.

6 Q. Give me a sense of how that training --
7 well, give me a sense of the things that you were
8 trained on that's more specific than just being
9 trained on how the instruments were used?

10 A. So initially we would get trained on in
11 general surgery and all the different types of
12 surgery. And then we would go on-site to learn
13 about the systems themselves and how to properly set
14 them up and some of the features that they have.

15 And then we would go into the details of
16 the instruments and how they are used in surgery,
17 and specifically what instruments are used in
18 specific procedures.

19 Q. Have you told me everything you can think
20 of regarding the type of training you received when
21 you first started at Intuitive regarding -- with
22 respect to the instruments that you were supporting
23 as a product marketing manager?

24 A. So after that training, I received another
25 training from our instrument and accessories support

1 teams on how to clean, disinfect and sterilize our
2 instruments.

3 Q. One level of training you received was on
4 general surgery; right?

5 A. Yes, sir.

6 Q. Then you then went on-site to learn about
7 the actual da Vinci systems themselves; how to set
8 them up and the features of those systems. Is that
9 true?

10 A. Yes.

11 Q. Then you also trained on how those
12 instruments were used in surgery; right?

13 A. Yes.

14 Q. Then you also received training from the
15 I&A team on how to clean, disinfect, and sterilize
16 instruments; right?

17 A. Yes.

18 Q. To do your job as a product marketing
19 manager supporting the I&A team, was there any other
20 training that you received?

21 A. In general, we get a bunch of internal
22 trainings, internal training modules. That's
23 online.

24 Q. And what topics do those internal online
25 training modules cover?

1 A. Just general, like, work instructions
2 for -- for the company. So it was just generic
3 training modules. I don't recall the specific
4 subjects.

5 Q. Have you exhausted your memory with respect
6 to the training that you received in connection with
7 your role as the product marketing manager
8 supporting the I&A team?

9 A. Yes. Those two trainings I specified were
10 the main pillars.

11 Q. You just said they were the main pillars.
12 I want to make sure that you've told me, as specific
13 as you can, the type of training that you received
14 that would allow you to do your job as a product
15 marketing manager supporting the I&A team.

16 Have you given me as much -- given me
17 everything you can recall, as you sit here today?

18 A. Yes.

19 Q. As part of your job as a product marketing
20 manager supporting the I&A team, did you have to
21 reach out to or communicate with hospitals?

22 A. Yes.

23 Q. Your title has the word "marketing" in it.
24 And can you describe or tell me the aspect of your
25 job that would help me understand the marketing

1 component of what you did?

2 A. Sure.

3 So for the most part, the projects I worked
4 on were -- okay. We wanted to validate a certain
5 tray or a peel pouch, and usually these validations
6 were performed -- or these peel pouches are from a
7 third party. So then I would work with these third
8 parties to make sure that these pill pouches and
9 trays meet the guidance and standards that we have.

10 And once they do, then we can educate our
11 internal teams to say, okay, these -- these trays
12 are -- these peel pouches are now compatible with
13 our devices and they can now be used with our
14 devices.

15 So a lot of it is mostly internal
16 awareness. That's the downstream marketing piece,
17 is making sure that our internal teams are aware of
18 the -- of how we did the validations, and why we did
19 the validations, and how does it help their
20 customers.

21 Q. So you said two words at the beginning.
22 You said the word "trays." And then there's a word
23 that has two words; the second word is "pouches." I
24 don't remember or can't understand what the first
25 word is.

1 A. No worries. Peel pouches.

2 Q. How do you spell the word "peel" in this
3 context?

4 A. P-E-E-L.

5 Q. What is a peel pouch?

6 A. A peel pouch is a container for
7 sterilization. So there are different methods for
8 doing sterilization and peel pouch is one of them.

9 Q. And a tray is a what?

10 A. A tray is another place that you can place
11 your devices. And the difference is, for a peel
12 pouch, typically, you only pouch one instrument
13 versus, in a tray or a container, you can pouch
14 multiple instruments.

15 Q. A peel pouch, you can only put in one
16 instrument to sterilize, but in a tray, you can have
17 multiple instruments to sterilize?

18 A. Typically, yes. And the trays are specific
19 for -- the trays need to be compatible with these
20 instruments.

21 So that's what we were -- that was the
22 majority of our projects, making sure that these
23 peel pouches and trays are compatible with our
24 instruments.

25 MR. ADAMS: All right. Let's take a short

1 break. We've been going for about an hour. Go off
2 the record.

3 THE VIDEOGRAPHER: Off the record. The
4 time is 10:07.

5 (Recess taken from 10:07 to 10:20.)

6 THE VIDEOGRAPHER: Back on the record. The
7 time is 10:20.

8 BY MR. ADAMS:

9 Q. Mr. Inacay, when we left, we were talking
10 about the marketing component of your job, and I
11 want to try to figure out how that marketing
12 component relates in any way to your communication
13 with hospitals.

14 Is there a connection between what you
15 described to me as the things that you did that were
16 part of your marketing hat and the communications
17 that you had with hospitals?

18 A. To be honest, for the most part, I -- I
19 didn't have direct communications with the
20 hospitals. It's mostly for our internal teams. And
21 then they would use that information to work with
22 their accounts to say, okay, is this product that we
23 validated for -- is this something my customers
24 would like? Right. Whether that's the tray or peel
25 pouch or any sort of that matter.

1 So, for me, I was marketing to our internal
2 teams.

3 Q. So far, you've described the internal
4 marketing that you did as the validation of certain
5 trays or peel pouches; right?

6 A. Yes.

7 Q. When you say "validation," what did you
8 mean by "validation" in this context?

9 A. Again, I'm not a validation expert, so I
10 really leave those validation requirements to them.
11 But it's really working with our validations team to
12 say, okay, do we have to perform any validations
13 tests? Or if not, then how do we help these third
14 parties to validate their products to be compatible
15 with ours? So ...

16 Q. I'm still trying to understand what you
17 mean by "validate" in this context. You just said
18 how to test to validate their products -- to
19 validate their products compatible with yours.

20 What do you mean by "validate" in that
21 context?

22 A. Again, I'm not a validation expert. But in
23 this context, it's making sure that the -- the --
24 for example, for peel pouches, we want to make sure
25 that once our instruments are in these peel pouches,

1 they are actually sterilized with these peel
2 pouches. Like, it gets to a certain sterilization
3 level and it can be used in procedures.

4 Q. Does Intuitive make peel pouches?

5 A. To my understanding, no.

6 Q. Does Intuitive make the trays that are the
7 sterilization trays?

8 A. For certain products, yes.

9 Q. With respect to the peel pouches, is it the
10 case that what you're doing is trying to make sure
11 that the peel pouch that is being made by some other
12 company is compatible with the -- your Intuitive
13 instrument that would be put in that peel pouch to
14 be sterilized properly?

15 A. Yes.

16 Q. So to the extent that you were dealing
17 internally with your folks and you were -- and you
18 were talking about the process of whether products
19 are validated, what you're saying is, internally,
20 you would be working with your team so that when
21 they go out into the field, they are able to
22 adequately determine if third-party products that
23 are being used with your products are compatible
24 with your products. Is that safe to say?

25 MS. LENT: Objection.

1 You can answer.

2 THE WITNESS: So can you repeat that? I'm
3 not sure what you're trying to get at.

4 BY MR. ADAMS:

5 Q. When you were internally talking with your
6 team, is it fair to say that what you were doing was
7 talking to them so that they -- and dealing, and
8 communicating with them in support of their efforts
9 to go out into the field to then ensure that
10 third-party products that were being used with your
11 products worked or were compatible with your
12 products?

13 MS. LENT: Objection.

14 THE WITNESS: I don't -- I'm not -- again,
15 I'm not sure of what the question is.

16 But for the most part, our customers have a
17 certain problem and, for this instance, they don't
18 want to use trays or containers for whatever reason.
19 And we want to get them a product that can help
20 them. And the current peel pouches that they use,
21 there are some problems with those.

22 So for this instance, we helped -- we
23 worked with a third party to design a peel pouch
24 that works and is compatible with our instruments
25 and those specification -- those specs are mainly

1 driven by our internal team saying like, okay, here
2 are some of the requirements that we have; please
3 meet them. And then we would help them perform some
4 of the testing or we would do the testings
5 ourselves.

6 And then my job is to say, okay, I know
7 what problem this solves. So I will message it out
8 to our internal teams to say this product may be --
9 may be something your customer would like because of
10 X, Y, and Z.

11 And then those teams are then -- can make
12 the decision whether they reach out to their
13 customers to say, This product is great for you
14 because of X, Y, and Z.

15 And, of course, we would have to update
16 documents and all of that stuff as well. And for
17 me, it would -- I would potentially create a
18 customer letter informing customers, too, right,
19 that this product is available once our documents
20 are updated.

21 So I hope that provides a little bit more
22 clarity.

23 BY MR. ADAMS:

24 Q. Yes. That's very helpful.

25 So what you've described to me as part of

1 your marketing component is internal communications
2 to address a -- that's designed to address a problem
3 that your customers are having; right?

4 A. Yes.

5 Q. An example of a problem is if a customer is
6 having a problem with the use of a particular peel
7 pouch; right?

8 A. Right. In this scenario, there are
9 off-the-shelf peel pouches they can use, but there
10 are problems inherently with those peel pouches with
11 our instruments. So we wanted to provide a product
12 that can help them. And in this case, it's a more
13 customized peel pouch for them.

14 Q. And in this case, what Intuitive would do
15 is Intuitive would work with a third party to design
16 a peel pouch that you determined is compatible with
17 your products; right?

18 A. For this scenario, yes, we decided that.

19 Q. And then you would -- in designing the peel
20 pouch, the specs for that pouch would be driven by
21 Intuitive; right?

22 A. The -- we would work with the third party,
23 but I'm not completely sure if the specifications
24 are completely Intuitive versus -- because we're not
25 peel pouch experts; right? We would simply work

1 with them.

2 So we could, for example, provide them
3 instrument dimensions.

4 Q. And then, in order for you to be
5 comfortable in suggesting to your customer that they
6 use this peel pouch, you then have to do testing on
7 that peel pouch to make sure that it is compatible
8 with your products; right?

9 A. Yes. Or to be clear, again, the third
10 party can test it and then they would provide us the
11 test results, and then we could make that decision.
12 Or we can do internal testing. So I'm not sure, in
13 this case, which one we did.

14 Q. So in your job as the marketing -- the
15 product marketing manager supporting the I&A
16 services team, one of the things you did during that
17 time was to work internally with your team with
18 respect to projects, the validation of certain trays
19 or peel pouches; right?

20 A. Yes. That was some of my projects, yes.

21 Q. Were there any other projects that you
22 worked on during that time?

23 A. There was an internal effort to create
24 training kits for our teams because, again, they
25 educate accounts. So there was that project.

1 Is there a specific project that you're
2 looking for?

3 Q. I'm trying to get from you all you can
4 recall about the projects that you worked on during
5 that time.

6 A. Okay. So just can you tell me when I can
7 stop, then? I'll just say the projects that I
8 remember. Is that what you would like?

9 Q. Yes.

10 A. Okay. So for that instance, we were
11 creating internal training kits for our I&A support
12 teams. That's one project.

13 There's -- we worked with a third party to
14 track -- to help our customers track reprocessing
15 cycles.

16 Q. To track what?

17 A. Reprocessing cycles of our instruments.

18 There's a project that my -- again, this
19 wasn't my project, but my manager had a project for
20 device reclamation. So it was obtaining
21 instruments, working with a third party to obtain
22 our expired instruments from the field.

23 There was another project to -- to -- so
24 our instruments are cleaned manually. So we had a
25 project to have an automated cleaning cycle for our

1 instruments.

2 Those were the official projects I was on.

3 Q. Were there unofficial projects that you
4 were on?

5 A. So, yes. I was working on -- so there were
6 accounts that were using adulterated da Vinci
7 instruments, and we were educating our -- our
8 customer accounts on why they shouldn't be using
9 those instruments.

10 Q. Any other unofficial projects that you were
11 on?

12 A. Not that I recall.

13 Q. Why did you describe the last project that
14 you just told me about as an unofficial project that
15 you were on?

16 A. For example, there wasn't like a project
17 manager on there. It was -- it was just mostly my
18 manager asked me to monitor accounts that are using
19 these devices and here's our process.

20 Q. And Mr. Swindon is the manager that told
21 you to do that?

22 A. Yes.

23 Q. Tell me everything Mr. Swindon told you
24 about with respect to this unofficial project
25 related to accounts that you were using adulterated

1 da Vinci instruments.

2 A. Again, I don't remember all the details.

3 But for the most part, my understanding was there
4 are these adulterated instruments. The way that
5 they are adulterated, you have to physically open
6 them up, and then there are lives added back to
7 these instruments when these instruments should be
8 expired.

9 And our process is to really educate -- so,
10 again, this is really internal education to our
11 customer-facing teams as to why these are -- these
12 instruments should not be used beyond their intended
13 life count. And the primary reason for that is the
14 patient-safety aspect.

15 Q. The information that you just gave me, is
16 this information that you received from Mr. Swindon?

17 A. Yes.

18 Q. Did he tell you this in writing, or was it
19 related to you orally?

20 A. I don't recall writing, but definitely
21 orally.

22 Q. When did Mr. Swindon talk to you
23 about -- withdrawn.

24 When were you assigned this unofficial
25 project of dealing with accounts that were being

1 adulterated, that were using adulterated da Vinci
2 instruments?

3 A. I don't recall the exact day, but I want to
4 say it was somewhere between June 2019, around that
5 time frame.

6 Q. When you spoke with Mr. Swindon on this
7 project, was it just you and him talking, or were
8 there other people as part of the conversation?

9 A. Just me and him talking.

10 Q. What, if anything, did you have to do to
11 get up to speed on this issue? The issue of using
12 adulterated -- or accounts using adulterated
13 da Vinci instruments in order for you to effectively
14 do your job.

15 A. For one, it was understanding all of the
16 internal teams that are currently involved. And,
17 again, this process has changed over time. But
18 initially, it was, here are the current team members
19 that are involved, and what is our process for it.

20 So for me, it was, we have this tableau
21 report that monitors the accounts that are using
22 these instruments. We worked with the regulatory
23 and legal teams.

24 And, yeah, that was it, for the most part,
25 that was the first step. I don't recall what are

1 the following steps at the moment.

2 Q. You said you worked with regulatory and
3 legal teams. What do you mean by "regulatory team"?

4 A. The primary contact was the post-market
5 team. So I'm not -- I'm not completely familiar
6 with their process, but they -- to my understanding,
7 they worked on some of the complaints, so ...

8 Q. How did you work with the regulatory team?

9 A. There was a team, a regulatory team member.
10 We would meet every week as a first process to go
11 over all of these accounts. And she would take that
12 information back to her regulatory team.

13 Q. Who was the regulatory team member that you
14 met with?

15 A. Emily Renuart.

16 Q. Can you say that slower, please?

17 A. Emily Renuart.

18 Q. Can you spell her last name?

19 A. R-E-N-U-A-R-T.

20 Q. When you say "regulatory," how are you
21 using that word in this context? What do you mean
22 by "regulatory"?

23 A. It's my -- again, she's my regulatory
24 contact. So we just wanted to make sure the
25 regulatory teams are aware. So Emily is that

1 contact, for me, anyway. She's my primary
2 regulatory contact.

3 Again, I'm not sure how -- how she uses
4 this information from the regulatory aspect.

5 Q. But when you're using the word
6 "regulatory," what are you referring to here?

7 Are you referring to a team that interfaces
8 with, for example, the FDA?

9 A. Again, I don't know -- I don't know that
10 team very well. So, again, I just -- I really just
11 interfaced with her, and it's up to her to work with
12 her team.

13 Q. Well, when you were "interfacing," what
14 does that mean? You spoke to her; right?

15 A. Correct. So this meeting we have, to go
16 over the accounts.

17 Q. So you have a meeting with Ms. Renuart;
18 right?

19 A. Yes.

20 Q. And you were going over the customer
21 accounts; right?

22 A. Yes.

23 Q. And these are accounts that you've learned
24 are using what you consider to be adulterated
25 da Vinci instruments; true?

1 A. Yes.

2 Q. And Ms. Renuart works with a -- the
3 regulatory team; right?

4 A. Yes.

5 Q. What is your understanding as to what
6 "regulatory" means in this context? What is she
7 regulating?

8 A. Again, I don't know what she uses this
9 information for, so ...

10 THE STENOGRAPHER: Ms. Lent, did you lodge
11 an objection there? I thought you said something.

12 MS. LENT: I did not.

13 THE STENOGRAPHER: Okay. Thank you.

14 BY MR. ADAMS:

15 Q. Mr. Inacay, as the product marketing
16 manager, did you have any sense as to what the
17 regulatory team did?

18 MS. LENT: Objection.

19 Go ahead.

20 THE WITNESS: For the most part, I
21 understand their process has to do with complaints
22 and inquiries coming from customers. Right? So I'm
23 not sure like it's -- I'm not an expert. So my
24 guess is, really, there are complaints or inquiries
25 involved, and she's putting comments in there,

1 according to this. Again, you would have to ask
2 her.

3 BY MR. ADAMS:

4 Q. You also said that you worked with the
5 legal team; right?

6 A. Yes.

7 Q. What do you mean by that?

8 MS. LENT: AJ, you can answer the question
9 generally. I just caution you to not reveal the
10 contents of any specific discussions you had with
11 the legal team that would be privileged.

12 THE WITNESS: The primary way we've worked
13 with legal is requesting hospital letters from them.

14 BY MR. ADAMS:

15 Q. Okay. So -- and these letters are letters
16 that are then ultimately being sent out to the
17 customers that you determine were using adulterated
18 instruments?

19 A. Yes.

20 Q. One of the things you said earlier,
21 Mr. Inacay, is that you were -- your job involved
22 working with the internal teams at Intuitive so that
23 they can -- well, let me ask a better question.

24 Was your job in this context to work with
25 the internal team who were responsible for accounts

1 that you determined were using adulterated
2 instruments so that you could craft a way to address
3 that issue with those customers?

4 A. I worked with our internal teams to make
5 them aware their accounts are using adulterated
6 instruments and to educate them on the
7 patient-safety risks of using these instruments.
8 That was our first step.

9 Q. When you use the word "adulterated," what
10 do you mean by "adulterated"?

11 A. To my understanding, in order to add lives
12 to these instruments, you have to physically open
13 these instruments. And that's not how these
14 instruments were intended to be used.

15 Q. So "adulterated," in this sense from you,
16 means that somebody is taking one of your
17 instruments, and they're opening the instrument to
18 add lives to the instrument?

19 A. Can you -- can you repeat that one more
20 time? Sorry about that.

21 Q. Your use of "adulterated" means that
22 there's a company or a person that is physically
23 opening up a da Vinci instrument and adding lives to
24 that instrument?

25 A. Again, adulterated is a -- to my

1 understanding, a regulatory or a legal use -- legal
2 use.

3 And, yes, for me, it's when these
4 instruments are being used in a way that they're not
5 intended to be used. And in this case, they are
6 being used past their validated amount of lives.

7 Q. When did you first learn about the company
8 Rebotix?

9 A. I don't recall the specifics. If I had to
10 guess, it would be in that year, 2019.

11 Q. How did you first learn about Rebotix?

12 A. I don't remember the first -- the first
13 time. I don't recall off the top of my head.

14 Q. What were you first told about Rebotix?

15 A. I don't recall the first -- first thing I
16 was told.

17 Q. Tell me everything you can recall about
18 what you were told about Rebotix.

19 A. In general, they're a third party. And,
20 again, this is from what I remember, I was told that
21 they're a third party that adds lives to our
22 instruments, and they may be performing other tasks
23 besides that. So they were selling instruments that
24 are past their intended lives.

25 Q. Have you told me everything that you can

1 recall about what you were told about Rebotix?

2 A. Yes. From what I recall, that's what I was
3 told.

4 Q. What you were told about Rebotix is that
5 Rebotix was a third party that added lives to the
6 da Vinci instruments; right?

7 A. Yes.

8 Q. You were also told that they may be
9 performing other tasks besides adding lives to the
10 instruments; right?

11 A. Yes.

12 Q. And you were also told that Rebotix was a
13 company that was selling instruments that are past
14 their intended lives; right?

15 A. Yes.

16 Q. You can't recall being told anything else
17 about Rebotix?

18 A. I mean, for the most part, they're
19 approaching our customers and offering these --
20 these instruments that are past their intended life
21 count to our customers. That's how we were
22 primarily made aware of, because customers reached
23 out to our internal teams, and then our -- our
24 customer-facing teams would reach out to corporate.
25 So in this case, it's the product management team or

1 so forth.

2 Q. And one of the things that you said there
3 was that they were poaching your customers. What
4 did you mean by "poaching"?

5 A. Approaching.

6 Q. Oh, I see. I misheard you.

7 So they were approaching your customers and
8 they were offering instruments that were past their
9 use counts. Is that what you were told?

10 A. Yes, and -- yes.

11 Q. You also mentioned that you were told that
12 Rebotix may be performing other tasks besides adding
13 lives to the instruments.

14 What other tasks were you told that Rebotix
15 may be performing?

16 A. Again, I can't recall the specifics, but I
17 was told that they offer to sharpen the scissors,
18 the monopolar curved scissors.

19 Q. Were you told about any other tasks that
20 they were performing other than adding lives to the
21 instruments?

22 A. I can't recall.

23 Q. Did you consider what you learned about
24 Rebotix, what Rebotix was doing to be a problem?

25 A. In my opinion --

1 MS. LENT: Objection.

2 THE WITNESS: In my opinion -- can you
3 repeat that, actually?

4 BY MR. ADAMS:

5 Q. Yeah. Did you consider what you learned
6 about Rebotix and what they were doing to be a
7 problem?

8 MS. LENT: Objection.

9 THE WITNESS: Can you rephrase that? What
10 do you mean by "problem"?

11 BY MR. ADAMS:

12 Q. Did you consider it to be a problem that
13 Rebotix was doing what you were told they were
14 doing?

15 MS. LENT: Objection.

16 THE WITNESS: Again, can you rephrase that?
17 I don't understand what you mean by "problem."

18 BY MR. ADAMS:

19 Q. Well, what about the word "problem" is
20 causing you confusion?

21 A. I mean, again, my opinion is these
22 instruments are a patient-safety risk and shouldn't
23 be used in surgery.

24 Q. Did you conclude that what Rebotix was
25 doing created a risk to patient safety?

1 A. In my opinion, yes.

2 Q. What is that opinion based on?

3 A. The internal teams and the testings that
4 they performed, and what I was told were potential
5 for patient-safety risks.

6 Q. You formed your opinion that what Rebotix
7 was doing posed a safety risk to patients based on
8 things you were told by your internal team?

9 A. Yes.

10 Q. You also formed that opinion that what
11 Rebotix was doing posed a safety risk to patients
12 based on testing that your internal team performed?

13 A. Yes.

14 Q. Now, when you say that you were told things
15 by the internal team, what internal team were you
16 referring to?

17 A. Sorry, can you say that one more time?

18 Q. When you said that you were told things by
19 your internal team that lead you to conclude that
20 things Rebotix was doing posed a safety risk to
21 patients, what internal team are you referring to?

22 A. The -- at least one team would be the
23 regulatory team.

24 Q. And this is a team who your contact was
25 Ms. Renuart?

1 A. Yes.

2 Q. Is Ms. Renuart the only person from the
3 regulatory team that you spoke to with respect to
4 this issue?

5 A. No.

6 Q. Who else from the regulatory team did you
7 talk to that lead you to conclude that what Rebotix
8 was doing posed a risk to patient safety?

9 A. To be clear, she was my primary contact,
10 but I was asked by regulatory teams, on ad hoc
11 bases [sic], random questions. So I just want it
12 to be clear. But, again, Emily Renuart is my
13 primary contact.

14 Q. Did someone, including Ms. Renuart, tell
15 you that what was being done by Rebotix posed a
16 safety risk to patients?

17 A. Sorry, can you repeat that question one
18 more time.

19 Q. Did Ms. Renuart, or anyone else from the
20 internal team, tell you that what Rebotix was doing
21 posed a safety risk to patients?

22 A. I don't recall all of the teams, but
23 Ms. Renuart is my primary contact, and she would
24 interface with the other internal teams. So she's
25 the technical expert on that. So I'm not sure whom

1 else she interfaced with.

2 Q. My question wasn't about who she interfaced
3 with. It's about what she told you.

4 Do you remember my question?

5 A. I believe you asked me if there were other
6 regulatory team members. So can you please ask the
7 question one more time, then?

8 Q. That wasn't my question.

9 My question is this: Did Ms. Renuart tell
10 you that the things that Rebotix was doing posed a
11 risk of -- a safety risk to patients?

12 A. Yes.

13 Q. Did she tell you how it is that she thought
14 that what Rebotix was doing posed a safety risk to
15 patients?

16 A. Yes.

17 Q. What did she tell you?

18 A. The way our instruments are designed,
19 they're intended to be used up to a certain amount
20 of times, a validated amount of times. Past that,
21 there are -- there are risks involved, which is
22 outlined in our customer letter.

23 Q. So one of the things that Ms. Renuart told
24 you was that the instruments that you sold were
25 intended to be used up to a certain amount of times;

1 right?

2 A. Yes.

3 Q. And she also told you that past -- uses of
4 that instrument past that intended -- withdrawn.

5 She also told you that using the
6 instruments past that certain amount of times posed
7 some risks; right?

8 A. Yes.

9 Q. Did she tell you anything else?

10 A. Not that I recall, no.

11 Q. You also said that you formed your opinion
12 that what Rebotix was doing posed a safety risk to
13 patients based on testing that the internal team
14 performed.

15 Do you remember that testimony, sir?

16 A. Yes.

17 Q. What testing are you referring to here?

18 A. The testing -- so, again, Emily -- Emily
19 would be the one to give you specifics on that. But
20 from my understanding, we performed internal
21 testings to make sure that our instruments can be
22 used up to a certain amount of lives. And within
23 those testings, we understand that there are risks
24 if used beyond those lives.

25 Q. That's information that Ms. Renuart told

1 you; right?

2 A. Yes.

3 Q. Did you base your opinion on you looking at
4 or validating any of the testing that she said was
5 performed?

6 MS. LENT: Objection.

7 THE WITNESS: Sorry. I don't understand
8 the question.

9 BY MR. ADAMS:

10 Q. Did you see the results of the testing that
11 she said was performed?

12 A. No.

13 Q. Did you, in any way, ask for data to
14 support the statement that she made about the
15 testing that was performed?

16 A. No.

17 Q. In forming your opinion regarding the
18 safety risks, you relied solely on the statements
19 that you were getting from Ms. Renuart and/or other
20 people from the regulatory team; right?

21 A. Yes.

22 Q. You didn't do any of your own investigating
23 or research; right?

24 A. No.

25 Q. Based on the opinion that you formed, did

1 you then instruct the folks at Intuitive to reach
2 out to their customers and tell them that their use
3 of instruments that were repaired by Rebotix pose a
4 safety risk to their patients?

5 MS. LENT: Objection.

6 THE WITNESS: I'm sorry. Can you rephrase?
7 I don't quite understand.

8 BY MR. ADAMS:

9 Q. Sure.

10 Based on the opinion that you formed about
11 Rebotix's actions, did you instruct the internal
12 people at Intuitive to reach out to their customers
13 to tell them that their use of products that were
14 being repaired by Rebotix posed a safety risk to
15 their patients?

16 MS. LENT: Objection.

17 THE WITNESS: Again, I'm not sure I quite
18 understand.

19 BY MR. ADAMS:

20 Q. Have you ever communicated to a hospital
21 that an EndoWrist that is repaired by Rebotix is
22 unsafe for use?

23 A. I myself -- are you asking me?

24 Q. Yes.

25 A. Repeat the question one more time, please.

1 Q. Have you ever communicated to a hospital
2 that an EndoWrist that is repaired by Rebotix is
3 unsafe for use?

4 A. To my recollection, I did not, no.

5 Q. Have you ever instructed someone from
6 Intuitive to reach out to hospitals to tell them
7 that an EndoWrist that is repaired by Rebotix is
8 safe for them to use -- is unsafe for them to use?

9 A. What do you mean by "instructed"?

10 Q. One of the things you do is you communicate
11 internally to your customer-facing coworkers; right?

12 A. Yes.

13 Q. Part of that communication with them is to
14 talk to them about how they are going to now
15 communicate with their customers; right?

16 A. Yes.

17 Q. In doing that, did you at any point
18 communicate to them that -- about things that you
19 wanted them to tell their customers about Rebotix?

20 A. The main communication is these instruments
21 have patient safety risks. And from what I recall,
22 we didn't mention anything about Rebotix.

23 Q. All right. Did you ever communicate to --
24 well, withdrawn.

25 At some point, did the customers -- did you

1 learn that your customers were using instruments

2 repaired by Rebotix?

3 A. Sorry, can you repeat that question one

4 more time?

5 Q. You knew internally that Rebotix was a

6 company that was reaching out to your customers;

7 right?

8 A. Yes.

9 Q. You knew that Rebotix was a third-party

10 company that was repairing EndoWrists; right?

11 A. Yes.

12 Q. And internally you had to figure out a way

13 to address this problem that existed with respect to

14 Rebotix's repairing of your instruments; right?

15 MS. LENT: Objection.

16 THE WITNESS: Yeah. I'm not sure. Again,

17 it's -- it doesn't really matter -- it doesn't

18 really matter about the third party. It's more we

19 want to make sure that our instruments are used up

20 to a certain amount of lives because that's what

21 they're validated to, because we make sure that

22 those instruments are safe.

23 BY MR. ADAMS:

24 Q. And this is a case in which Rebotix is

25 suing Intuitive for; right?

1 A. I'm not sure like what this case -- like
2 all the details for this case, sir.

3 Q. I wasn't asking about all of the details.
4 I was asking about one specific detail.

5 Do you understand that this is a case in
6 which Rebotix has brought a lawsuit against your
7 company, Intuitive?

8 A. Yes.

9 Q. Do you understand that it's based on, in
10 part, Rebotix's repairing of EndoWrists?

11 A. Yes.

12 Q. Did you, when you were communicating
13 internally with your coworkers, discuss the fact
14 that Rebotix was a third party that was repairing
15 your devices?

16 A. The education piece was about adding lives
17 to these instruments. I don't recall mentioning
18 repairing.

19 Q. Is it your testimony that you were never
20 told that one of the things Rebotix did was that it
21 repaired the EndoWrists instruments?

22 A. Can you repeat that one more time?

23 Q. Is it the case that you do not recall ever
24 being told that one of the things that Rebotix did
25 was that it would repair the EndoWrist instruments?

1 A. If you're saying that resharpening scissors
2 accounts for repair, then, yes, I've heard of a
3 third party, potentially Rebotix, repairing
4 instruments, yes. If resharpening scissors is that,
5 then, yes.

6 Q. One of the things you were told internally
7 was that Rebotix would resharpen EndoWrist scissors;
8 right?

9 A. Yes.

10 Q. Now, did you internally conclude that
11 Rebotix's practice of sharpening the scissors posed
12 a safety risk to patients?

13 A. Can you repeat that one more time? Sorry.

14 Q. Did you conclude that Rebotix's acts of
15 resharpening scissors posed a safety risk to
16 patients?

17 A. Yes.

18 Q. Did you ever communicate to your coworkers
19 that they should reach out to their customers and
20 tell them that the use of a device that was
21 repaired, whether it's resharpening or whatever, by
22 Rebotix posed a risk of safety to their customers --
23 to their patients?

24 MS. LENT: Objection.

25 THE WITNESS: Again, I don't recall

1 mentioning repair. Again, it's mostly, from what I
2 recall, these instruments are intended to be used up
3 to a certain amount of lives. And adding lives
4 is -- can have patient safety risks.

5 BY MR. ADAMS:

6 Q. So there are two aspects of this that I
7 want to get into regarding the third
8 party -- withdrawn.

9 One of the things, Mr. Inacay, that you
10 were told posed a safety risk was that Rebotix would
11 add lives to an EndoWrist that had reached its
12 maximum amount of lives based on the uses of that
13 device; right?

14 A. Yes.

15 Q. Another thing that we talked about is that
16 Rebotix may also be -- in adding lives, it may be
17 resharpening the scissors; right?

18 A. Yes.

19 Q. Did you consider both of those two things
20 to be safety risks, or just one of the two?

21 MS. LENT: Objection.

22 THE WITNESS: Again, for me primary is
23 the -- is the adding of lives. The resharpening of
24 scissors I was told could be a risk because they are
25 not intended to be resharpened, from my

1 understanding.

2 MR. ADAMS: Let's take a short break.

3 We're up against an hour.

4 THE VIDEOGRAPHER: Off the record. The
5 time is 11:15.

6 (Recess taken from 11:15 to 11:29.)

7 THE VIDEOGRAPHER: Back on the record. The
8 time is 11:29.

9 MR. ADAMS: I'm going to mark Exhibit 1.

10 It is a document that's in the folder that's titled
11 8/15/19 Bair to Inacay.

12 (Marked for identification purposes,
13 Exhibit 1.)

14 MR. ADAMS: And I'm going to screen-share.

15 BY MR. ADAMS:

16 Q. Do you recognize on your screen,
17 Mr. Inacay, a document that has at the top an e-mail
18 from Ron Bair to you dated August 15, 2019?

19 A. Yes.

20 Q. And it says "FYI"; right?

21 A. Yes.

22 Q. I'm going to scroll down.

23 Now, can you tell based on this that
24 Mr. Bair is making you aware of or providing you
25 with information that is included in the e-mail

1 chain that follows?

2 A. Sorry, what is the question?

3 Q. When Mr. Bair sent you an e-mail that says

4 "FYI," do you understand that what he's doing is

5 he's forwarding to you, for your information,

6 statements that are being made or things that are

7 being said in the e-mail chain that follows -- that

8 comes after that e-mail?

9 A. Yes.

10 Q. Who's Ron Bair?

11 A. He's the -- or he was at the time a field

12 service director.

13 Q. What did he do as a field service director?

14 A. I'm not a field service director. But if I

15 had to guess, I know he manages field service

16 managers.

17 Q. And what do the field service managers do?

18 A. They -- again, I'm not a field service

19 manager, but they manage their field service

20 engineers.

21 Q. What do field service engineers do?

22 A. Also not a field service engineer, but one

23 aspect they do is they service the robots. Our

24 field service engineers service Intuitive systems,

25 which many people know as "robots."

1 Q. I'm going to scroll down to the very last
2 e-mail in this document. It's the e-mail that has
3 the date on August 5, 2019.

4 Do you see that?

5 A. Yes.

6 Q. It says that -- and you wrote this e-mail;
7 right?

8 A. Yes.

9 Q. And it's being sent to somebody named Alan;
10 right?

11 A. Yes.

12 Q. And Alan Wyles -- is Alan the Alan Wyles
13 that is in the e-mail just above that who is a
14 senior clinical sales representative?

15 A. Yes.

16 Q. And Mr. Wyles worked at Intuitive; right?

17 A. Yes.

18 Q. And this e-mail to Mr. -- Mr. Wyles you
19 write:

20 "We wanted to make you aware that
21 Citizens Medical Center has been
22 approached by a third-party company to
23 provide them unauthorized reprogrammed
24 da Vinci instruments."

25 Do you see that?

1 A. Yes.

2 Q. Who was the third-party company that had
3 approached Citizens Medical Center?

4 A. I don't recall.

5 Q. When you write "unauthorized reprogrammed
6 da Vinci instruments," what do you mean by that?

7 A. Da Vinci devices that are being used past
8 their intended life count.

9 Q. Now, one of the things you write in this is
10 "The attached FAQ highlights the patient safety
11 risks"; right?

12 A. Yes.

13 Q. And then one of the things you want
14 Mr. Wyles to do is to reach out to his customers and
15 to emphasize that the patient safety risks involved
16 with programmed instruments -- or reprogrammed
17 instruments.

18 Do you see that?

19 A. Yes.

20 MR. ADAMS: Let's stop screen-sharing.

21 I'm going to mark next Exhibit No. 2. It's
22 the document in the folder that is titled
23 912 Inacay.

24 (Marked for identification purposes,
25 Exhibit 2.)

1 MR. ADAMS: I'll go ahead and screen-share
2 that.

3 BY MR. ADAMS:

4 Q. Do you see on the screen, Mr. Inacay, I've
5 got a document that has at the top Inacay -- or AJ
6 Inacay. It's dated 9/12/2019?

7 A. Yes.

8 Q. It's being sent to somebody named Dave
9 Woodward; right?

10 A. Yes.

11 Q. I'm going to scroll down a little bit.

12 On September 4, 2019, Mr. Woodward --
13 actually that's the wrong document.

14 On September 12th, 2019, Mr. Woodward asked
15 you to send the referenced FAQ for this.

16 Do you see that?

17 A. Yes.

18 Q. And then, in your response, you say:

19 "Technically we have two, but we've
20 haven't been using the internal FAQ for a
21 while now."

22 Do you see that?

23 A. Yes.

24 Q. And you attached to the e-mail two FAQ
25 documents; one external, one internal. Right?

1 A. Yes.

2 Q. You write in this e-mail:

3 "I think the concern was that it
4 would get leaked to the third-party
5 companies."

6 And this is with respect to the internal
7 FAQ.

8 Do you see that?

9 A. Yes.

10 Q. What was your concern with respect to those
11 documents being leaked -- or at least -- withdrawn.

12 What was concern with respect to the
13 internal FAQ being leaked to third companies?

14 A. I honestly don't recall what's on the
15 internal FAQ, what are the differences, so ...

16 Q. Well, when you wrote here that I think the
17 concern was that it would get leaked to the
18 third-party companies, why did you have that
19 concern?

20 A. It's an internal-facing document. So it's
21 not meant to be shown externally.

22 Q. At some point prior to this e-mail, did you
23 become aware of the fact that somebody was leaking
24 your internal documents to third-party companies?

25 A. I'm not sure what you mean. Can you

1 rephrase?

2 Q. In the e-mail, you write:

3 "Technically, we have two, but we
4 haven't been using the internal FAQ for a
5 while now."

6 Do you see that?

7 A. Yes.

8 Q. And when you write the next sentence, is
9 that explaining why the internal FAQ had not been
10 used for a while?

11 A. I don't recall, to be honest.

12 Q. Well, take a look at the words that you
13 wrote.

14 A. Okay.

15 Q. Looking at the words, do you understand
16 now?

17 A. I understand the -- these words at this
18 moment. I just don't recall what the intention was
19 at this -- the time of this e-mail.

20 Q. I'm pausing only because it -- Karen may
21 have been disconnected for a while.

22 MS. LENT: My Wi-Fi went down. I don't
23 know if you kept going, but I've been off for like
24 three minutes.

25 MR. ADAMS: We did absolutely keep going,

1 and I did not realize that you had disappeared.

2 MS. LENT: Sorry. I tried to e-mail Alena.

3 Can you just give me a second to check the
4 transcript?

5 MR. ADAMS: Sure.

6 MS. LENT: Thank you. Apologies. School
7 ended this week, so I've got kids that I just had to
8 kick off devices. One of the challenges of remote
9 work.

10 Okay. I'm fine.

11 BY MR. ADAMS:

12 Q. Mr. Inacay, what I'm trying to get at is
13 this: When you now look at the first sentence and
14 you look at the second sentence that you write in
15 context, would you agree that what you were telling
16 Mr. Woodward is that the internal FAQ had not been
17 used for a while because there was concern that it
18 would get leaked to the third-party companies?

19 A. Again, as I'm reading this now, it seems
20 like the concern is just that internal FAQ would --
21 would be, I guess, quote-unquote, leaked to the
22 third-party company.

23 Q. What caused that concern?

24 A. I don't recall.

25 MR. ADAMS: I'm going to stop

1 screen-sharing. And I'm going to mark next

2 Exhibit 3. It's the document that's titled Internal

3 FAQ.

4 (Marked for identification purposes,

5 Exhibit 3.)

6 MR. ADAMS: Screen-share.

7 BY MR. ADAMS:

8 Q. I've put on the screen what I've marked as

9 Exhibit 3. At the top it says Unauthorized

10 Reprogrammed Instrument FAQs, and it says internal

11 use only. Do you see that?

12 A. Yes.

13 Q. Do you recognize this document, sir?

14 A. I vaguely remember it, yes.

15 Q. Is this an internal FAQ that you referenced

16 in the e-mail to Mr. Woodward?

17 A. I believe so.

18 Q. I'm going to see if I can blow this up just

19 a little bit more. This is as good as it's going to

20 get for now.

21 If we look at the first question, "What is

22 an unauthorized reprogrammed instrument," the last

23 sentence that is written here is:

24 "Rebotix is the name of one company

25 that we are aware of reprogramming

1 instruments, but there may be others."

2 Do you see that?

3 A. Yes.

4 Q. As of this date, you were aware of Rebotix
5 and the fact that they were one of the companies
6 that you said was reprogramming your instruments;
7 right?

8 A. Yes.

9 Q. Were you aware of any other names, of any
10 other companies?

11 A. I've only heard from our customer-facing
12 teams, but there were -- I recall at least one name,
13 Restore Robotics. From what I remember, maybe
14 Medline was mentioned as well, but I honestly don't
15 remember all of them.

16 Q. Was -- now, you've got this internal FAQ.
17 Was there an external FAQ that you made available to
18 the -- your customers?

19 A. From what I recall, we did have an external
20 FAQ. Again, I joined -- as the processes evolved
21 over time and I joined, now I remember,
22 January 2019. But prior to that, I am not -- I'm
23 not sure how this external FAQ was being used.

24 So yeah. I'm not aware of how this
25 external FAQ was being used prior to me joining the

1 company.

2 Q. One of the things I asked you about was
3 whether or not you instructed any of your internal
4 people to reach out to their customers to talk to
5 them about the safety risks that are being posed by
6 the companies that were either repairing or
7 refurbishing your products.

8 Do you remember that line of questions?

9 A. Yes, I remember it.

10 MR. ADAMS: Let's mark as Exhibit 4 a
11 document that's titled 10/16/19 Inacay to Menold on
12 the Intuitive.

13 (Marked for identification purposes,
14 Exhibit 4.)

15 MR. ADAMS: I'm going to screen-share.

16 I can't tell if I'm screen-sharing the
17 right document. There you go.

18 BY MR. ADAMS:

19 Q. Do you see on your screen, sir, there's an
20 e-mail at the top from you dated 10/16/2019 to Jeff
21 Menold.

22 Do you see that?

23 A. Yes.

24 Q. Who is Jeff Menold?

25 A. I don't recall who Jeff Menold is.

1 Q. I'm going to scroll down. And I stopped at
2 part of the screen in this e-mail exchange where
3 there's an e-mail from you that's dated October 3rd,
4 2019, to Jeff Menold.

5 Do you see that?

6 A. Yes.

7 Q. And in this e-mail, you write:

8 "Thanks for reaching out. Yes, it
9 looks like Evergreen has one refurbished
10 ProGrasp forceps."

11 Do you see that?

12 A. Yes.

13 Q. When you write the word "Evergreen," there
14 what is that referring to?

15 A. It looks like Evergreen is the hospital, so
16 the customer account.

17 Q. You then write:

18 "Please reach out to the account and
19 reiterate the patient safety risks
20 involved with using these refurbished
21 instruments."

22 Do you see that, sir?

23 A. Yes.

24 Q. Now, is this an instance of you telling
25 your coworker at Intuitive that they are to reach

1 out to one of the hospitals and to talk to them
2 about your view that using refurbished instruments
3 posed a safety risk?

4 MS. LENT: Objection.

5 THE WITNESS: Can you repeat that one more
6 time?

7 BY MR. ADAMS:

8 Q. One of the things we talked about earlier
9 was whether or not you instructed your coworkers to
10 reach out to their customers to talk to them about
11 the potential risk of using third-party repaired or
12 refurbished instruments.

13 Do you remember that?

14 A. Yes.

15 Q. Is this an example of you doing that?

16 A. Can you -- what does "instructed" mean?

17 Q. Asking them to do something.

18 A. Well, again, I don't recall this e-mail
19 very well. But as I read this now, it looks like
20 I'm asking them to reach out to the customer and
21 reiterate the patient-safety risks involved with
22 using these refurbished instruments, so ...

23 Q. One of the things you did as the product
24 marketing manager with respect to these -- this
25 issue was you would ask your coworkers to reach out

1 to their customers and to reiterate to them your
2 view that using repaired or refurbished instruments
3 posed a safety risk; right?

4 MS. LENT: Objection.

5 THE WITNESS: Can you repeat that one more
6 time, please?

7 BY MR. ADAMS:

8 Q. Sure. One of the things you did as project
9 manager was that you would tell your coworkers that
10 they should reach out to their customers to let them
11 know about the safety risks that you believed
12 existed with respect to their use of either repaired
13 or refurbished Intuitive instruments; right?

14 MS. LENT: Objection.

15 THE WITNESS: So we would educate accounts
16 about the patient safety risk with using instruments
17 that were being used beyond their validated
18 instrument counts.

19 BY MR. ADAMS:

20 Q. And part of your job was to make sure that
21 your coworkers communicated to their customers about
22 what you believed to be the safety risks; right?

23 MS. LENT: Objection.

24 THE WITNESS: Can you repeat that one more
25 time? Sorry.

1 BY MR. ADAMS:

2 Q. Part of your job was to talk to your
3 coworkers and ask them to reach out to their
4 customers to talk to them about what you perceived
5 to be the safety risks that were -- that existed
6 based on their use of either repaired or refurbished
7 instruments; right?

8 MS. LENT: Objection.

9 THE WITNESS: Again -- so, again, I don't
10 recall what the context is for refurbished
11 instruments in this e-mail, but for me, it's
12 instruments that are being used past their validated
13 instrument lives. So that's all I can remember.

14 BY MR. ADAMS:

15 Q. What I'm trying to just get is this: Was
16 part of your job, when you learned about hospitals
17 that were using or potentially using repaired or
18 refurbished instruments, to instruct your coworkers
19 that they are supposed to talk to them about that?

20 A. Sorry. I'm just -- it's the same answer;
21 right? It's instruments. And, again, I don't
22 recall the context of this. So, for me, I can only
23 tell you right now it's about instruments that are
24 used past their validated instrument lives. That's
25 all --

1 Q. All right. Let's go down to the very first
2 e-mail in this chain, sir. It is dated July 2nd,
3 2019.

4 Do you see that?

5 A. Yes.

6 Q. It's from you to somebody named Jarrod
7 Bowers and Jeff Menold.

8 Do you see that?

9 A. Yes.

10 Q. Now, do you know who Jarrod Bowers is?

11 A. I don't recall, no.

12 Q. Do you know if Jarrod Bowers worked for
13 Intuitive, or did Jarrod Bowers work for Evergreen
14 Hospital in Seattle?

15 A. I don't recall. Can you scroll down?
16 Maybe there's a title in there or ...

17 Q. I'm showing you right now the bulk of your
18 e-mail. It starts "Hi, Jarrod and Jeff."

19 Do you see that?

20 A. Right, yes.

21 Q. "I am part of the services product
22 marketing team that's overlooking the use of
23 unauthorized reprogrammed instruments on your
24 da Vinci systems."

25 Do you see that?

1 A. Yes.

2 Q. "I was forwarded your e-mail in regards to
3 Evergreen Hospital in Seattle."

4 Do you see that?

5 A. Yes.

6 Q. Did Jarrod -- now, if we scroll up just a
7 little bit, you'll see that Jeff Menold has an
8 Intuitive e-mail address there; right?

9 A. Right.

10 Q. That will tell that you Jeff Menold was
11 working for Intuitive?

12 A. Yes.

13 Q. Was Jarrod Bowers working for Intuitive?

14 A. Again, I'm not sure. Usually they would
15 have their titles at the bottom. So I don't
16 remember.

17 Q. Well, it would have the title of -- hold
18 on. Let me see if I have an e-mail from him.

19 In this chain, there doesn't appear to be
20 an e-mail directly from Mr. Bowers, so it doesn't
21 show.

22 But in this context, can you tell us
23 whether or not you were sending an e-mail to two
24 Intuitive people? Or are you sending it to one
25 Intuitive and another external person? Just from

1 this e-mail.

2 A. Again, I don't recall this e-mail, but if I
3 had to guess today, I would -- I would think, yes,
4 he's internal. He's Intuitive internal.

5 Q. One of the questions you asked is this:

6 "How did you come across the Si
7 EndoWrist repair process paper
8 instructions? Was it attached on the
9 system?"

10 Do you see that?

11 A. Yes.

12 Q. Is that a question you would be asking one
13 of your internal people, or would you be asking that
14 of an external person?

15 A. I -- as of today, I would say that would be
16 an internal question.

17 Q. Now, what do you mean by "the EndoWrist
18 repair process paper instructions"?

19 A. I don't recall.

20 Q. Now, I was scrolling through this to see
21 when the first use of the word "refurbished" comes
22 up. And it appears from this e-mail chain that the
23 first time it appears is when you write the words in
24 quotes.

25 And if you want, I can scroll again, to see

1 if you can double-check on that.

2 Do you want to look through the entire
3 chain, sir, to confirm that?

4 A. Yeah, sure.

5 Q. All right. So let's do it. Let's start
6 with the first e-mail in the bottom. This is the
7 e-mail that we talked about dated July 2nd.

8 Will you agree that the use of the word
9 "refurbished" doesn't appear?

10 A. M-hm.

11 Q. "Yes"?

12 A. Yes.

13 Q. And if I scroll up a little bit, there's a
14 response from Mr. Menold that same day. It doesn't
15 appear that Mr. Menold raises -- or uses the term
16 "refurbished" in his e-mail; right?

17 A. Yes.

18 Q. He doesn't use it; right?

19 A. He does not use it in this chain.

20 Q. And the next in the chain is July 3rd.

21 It's from you back to Mr. Menold and Mr. Bowers.

22 Can you confirm that you don't use the word
23 "refurbished" in this e-mail; correct?

24 A. Yes.

25 Q. "Yes" you do, or you don't?

1 A. I don't see "refurbished" in this part of
2 the e-mail chain.

3 Q. And then next in the chain is July 16 from
4 Mr. Menold to you.

5 Do you see that?

6 A. Yes.

7 Q. Does Mr. Menold use the word "refurbished"?

8 A. He has not used the word "refurbished."

9 Q. Next in the chain is, again, an e-mail from
10 you to Mr. Menold dated July 16.

11 Do you see that?

12 A. Yes, I see the e-mail.

13 Q. And do you use the word "refurbished" in
14 this e-mail?

15 A. No, I do not.

16 Q. Next in the chain is from Mr. Menold to you
17 dated October 2nd; right?

18 A. Yes.

19 Q. And does Mr. Menold use the word
20 "refurbished"?

21 A. No "refurbished" in this e-mail chain.

22 Q. And now we're next in line. This is that
23 October 3rd e-mail from you to Mr. Menold, again.

24 Do you see that, sir?

25 A. Yes.

1 Q. Now, again, that sentence that we
2 highlighted there says:

3 "Please reach out to the account and
4 reiterate the patient safety risks
5 involved with using these 'refurbished'
6 instruments."

7 Do you see that?

8 A. Yes, I see had.

9 Q. Why did you put that word in quotes?

10 A. I don't recall.

11 Q. What did you mean by the use of the word
12 "refurbished" here?

13 A. I don't recall.

14 Q. Would you agree that the use of the word
15 "refurbished" is a different word than
16 "reprogrammed"?

17 A. Yes.

18 Q. Based on the fact that you used a different
19 word in quotes, would you agree that you mean to
20 talk about a process that's being used with your
21 instruments that's different than a reprogrammed
22 instrument?

23 A. Can you repeat that one more time?

24 Q. Would you agree, sir, that -- well, let's
25 do this.

1 In the e-mail that you sent on July 16, you
2 use the word "reprogrammed instruments" there.

3 Do you see that, sir?

4 A. Yes.

5 Q. And that's -- when you use the word
6 "reprogrammed," that's meant to talk about a device
7 in which some third party has gone in and they've
8 changed the use counter; right? They've
9 reprogrammed it; right?

10 MS. LENT: Objection.

11 THE WITNESS: Can you repeat the question,
12 please?

13 BY MR. ADAMS:

14 Q. When you use the word "reprogram," are you
15 using it to describe the situation where a third
16 party has taken your instrument and changed the use
17 counter on the instrument in some way?

18 MS. LENT: Objection.

19 THE WITNESS: I don't recall what the
20 context is for reprogram, for this instance. Again,
21 if I had to -- if I had to guess, we would have to
22 check what the customer's letter says or what the
23 FAQ says for what's reprogrammed.

24 BY MR. ADAMS:

25 Q. Well, when I'm looking through your

1 documents, sir, to the extent that you're using the
2 word "reprogrammed," what did you intend to impart
3 with the use of that word?

4 A. Again, I don't recall what it was at the
5 time. But as I read it now, if I had to guess, it
6 would encompass everything that was being done to
7 our instruments. And that means, yes, one of it
8 being adding lives, but it could potentially be
9 other -- other things. I'm not -- I'm not fully
10 sure.

11 Q. Now, you changed the word "reprogrammed" --
12 withdrawn.

13 In your e-mail on October 3rd, you don't
14 use the word "reprogrammed"; right?

15 A. Yes. I don't use the word "reprogrammed."

16 Q. You used the word "refurbished"; right?

17 A. Yes.

18 Q. You put it in quotes?

19 A. Yes.

20 Q. Why did you quote it?

21 A. I don't know, sir.

22 Q. What did you mean by the use of the word
23 "refurbished"?

24 A. I don't recall.

25 Q. Is it possible, sir, that as of this time,

1 you understood that one of the things that was being
2 done to your devices was that the company was in
3 some way repairing them?

4 MS. LENT: Objection.

5 THE WITNESS: I'm sorry. I don't -- I
6 don't recall.

7 BY MR. ADAMS:

8 Q. Did you ever learn at any point that
9 Rebotix or any third party was actually doing
10 repairs to your instruments?

11 A. Again, I don't -- I don't know what you
12 mean by "repair." If it's the resharpening like
13 that instance, okay, I've heard of that, but I don't
14 know what you mean by "repair."

15 Q. Could you have meant by "refurbishing" the
16 instance in which a party is taking one of your
17 instruments and sharpening the scissors?

18 A. Can you rephrase the question? I'm sorry.
19 I don't understand.

20 Q. Did you mean, by "refurbish," the situation
21 in which a third party was sharpening the scissors
22 of one of your instruments?

23 A. I'm sorry. I don't know what "refurbished"
24 is in this context. I really don't.

25 Q. Did you have a concern about the fact that

1 companies that allowed a -- that allowed Rebotix to
2 repair your EndoWrists would be doing so to save
3 themselves money?

4 A. I'm sorry. I don't understand the
5 question. Can you rephrase?

6 Q. Did you have a concern -- did you have --
7 yes.

8 Did you have a concern that one of the
9 reasons companies would use Rebotix to repair the
10 EndoWrist is that the company wanted to save
11 themselves money?

12 A. There was a concern for any use of
13 unauthorized instruments that are used past their
14 amount of lives, their intended amount of lives. So
15 if you're asking me like specifically for Restore
16 Robotics, I don't recall that.

17 Q. Did you have a concern that your customer
18 was refurbishing instruments to simply save on
19 costs?

20 A. Again, I don't know what you mean by
21 "refurbished." Are you saying sharpening scissors
22 is refurbishment? I don't know.

23 Q. Let's look at Exhibit 4, again, sir.

24 Do you have it in front of you?

25 A. Yes, I see the e-mail.

1 Q. All right. The third sentence that you
2 write in your October 3rd e-mail reads:

3 "Has the customer resorted to using
4 'refurbished,'" and it's in quotes,
5 "instruments to simply save on costs?"

6 Do you see that?

7 A. Yes, I see that.

8 Q. That's a sentence that you wrote.

9 A. Yes.

10 Q. And you put the word "refurbished" in
11 quotes?

12 A. Yes.

13 Q. As of this time, did you have a concern
14 that customers were resorting to using refurbished
15 instruments to simply save on costs?

16 A. Again, I don't know what you mean by
17 "refurbished," but if you're asking me at this
18 time -- I mean, I can only read what's on this
19 e-mail. I don't -- I don't know what you mean by
20 "refurbished."

21 Q. You keep saying you don't know what I mean
22 by "refurbished"; right?

23 A. Or even myself at this time. I don't know
24 what you mean by "refurbished."

25 Q. Well, it's more accurate for you to tell me

1 that you don't know what you meant by "refurbished"
2 when you wrote these words; right?

3 A. Yes. When I put "refurbished" -- like, as
4 I read it right now, I don't recall what is
5 refurbished in this context.

6 Q. Do you recall having a concern that
7 whatever the customer was doing, that they were
8 doing it to simply save on costs?

9 A. What do you mean by "whatever the customer
10 is doing"?

11 Q. At some point you learned that this
12 customer was -- Evergreen had a ProGrasp forcep that
13 was either reprogrammed or refurbished in some way;
14 right?

15 A. Yes.

16 Q. All right. That's what I mean by "whatever
17 they were doing."

18 A. Okay.

19 Q. Did you have a concern that whatever the
20 Evergreen customer was doing, they were doing it
21 simply to save on costs?

22 A. Again, I don't know what the context is for
23 this, but the way I read it now is we wanted to help
24 our customers with their problems; right? So if --
25 whatever we can do to help solve that, we will. But

1 I don't -- I honestly don't know what you mean.

2 Q. When you wrote the words "has the customer
3 resorted to using refurbished instruments to simply
4 save on costs," at the time you wrote those words,
5 you understood what you meant by those words; right?

6 A. No. I don't -- I don't recall what --

7 Q. Mr. Inacay, I'm not asking you if you
8 recall it now. I appreciate that you probably don't
9 remember what you meant by it now.

10 What I'm trying to understand is when you
11 wrote the words as of October 3rd, 2019, would you
12 agree with me that you had an understanding as to
13 why you were writing the words you were writing;
14 right?

15 A. Sorry. That's still unclear to me.

16 Q. When you wrote the word "refurbished" in
17 this e-mail on October 3rd, 2019, would you agree
18 that you, at that time, understood what you meant by
19 the word "refurbished"?

20 A. I don't know.

21 Q. Let me ask you this question: When you
22 wrote the word "customer" in that sentence -- take a
23 look at the sentence, sir.

24 A. Yes.

25 Q. You wrote "has the customer."

1 Do you see that?

2 A. Yes. Yes.

3 Q. As of that time when you wrote the word
4 "customer," you understood in your mind what you
5 meant by "customer"; right?

6 A. Yes.

7 Q. You understood what you meant by
8 "resorted"; right?

9 A. Yes.

10 Q. You understood what you meant by "using";
11 right? "Resorted to using." You understood what
12 you meant by that word; right?

13 A. Yes.

14 Q. When you wrote the word "instruments," you
15 understood what you meant by "instruments" at that
16 time; right?

17 A. Yes.

18 Q. Meaning today you may not recall what
19 instruments you really were talking about, but as of
20 October 3rd, when you wrote the words, you had an
21 understanding as to what instruments you were
22 talking about; right?

23 A. Yes.

24 Q. Following that logic, Mr. Inacay, would you
25 not agree with me that when you put the words

1 "refurbished" in quotes in this e-mail, as of
2 October 3rd, 2019, you had an understanding as to
3 what you meant by "refurbished," even though you may
4 not recall today what you meant?

5 MS. LENT: Objection.

6 THE WITNESS: I'm sorry. I'm uncomfortable
7 answering when I really don't understand the
8 question. Like --

9 BY MR. ADAMS:

10 Q. You were able to very clearly answer my
11 questions about your understanding as to certain
12 words in this e-mail as of the time that you wrote
13 them; right?

14 A. So is the question, like, do I understand
15 what "customer" is, or "resorted" is, or
16 "instruments" is? Like --

17 Q. No, that's not my question.

18 A. I don't -- I don't -- yeah.

19 Q. That's not my question, Mr. Inacay. Let's
20 slow down, take it a little slower. And it's
21 actually a simple concept.

22 The concept is this: At the time that you
23 wrote the words in this e-mail, did you have an
24 understanding as to what you meant by the words you
25 wrote?

1 A. Like, the way you're asking that makes me
2 like -- like I would have to like time travel back
3 into time and be in that -- like when I wrote this
4 e-mail is how you're asking the question. I can
5 guess, yes.

6 Q. And why is it that you think you can guess
7 that you understood the words that you wrote?

8 A. Because I don't remember this e-mail.

9 Q. So you don't remember writing the e-mail;
10 right?

11 A. Yes, sir.

12 Q. Would you agree with me that when you wrote
13 the words, you remembered it at the time; right?

14 A. At the time --

15 MS. LENT: Objection.

16 THE WITNESS: Can you rephrase?

17 BY MR. ADAMS:

18 Q. Mr. Inacay, as of October 3rd, 2019, when
19 you wrote the e-mail to Mr. Menold, did you have an
20 understanding as to all of the words that you were
21 writing in that e-mail, and what they meant to you?

22 A. I don't know.

23 Q. It's possible that when you wrote words in
24 that e-mail as of that time, October 3rd, you were
25 writing words that you did not have any

1 understanding as to what those words meant to you?

2 A. For the, quote-unquote, "refurbished"

3 piece, again, I don't recall what I meant by

4 "refurbished."

5 Q. But at some point, you meant something by

6 it; right?

7 Well, withdrawn. Let me ask a better

8 question.

9 As of October 3rd, 2019, you did mean to

10 impart some sort of meaning to the word

11 "refurbished"; right?

12 A. Yes.

13 Q. Would you agree that, as of that time, you

14 understood in your own mind what you were trying to

15 impart with respect to using that word?

16 A. I don't know.

17 Q. As of the time that you wrote this e-mail,

18 when you wrote the words "to simply save on costs,"

19 you understood what those words meant to you; right?

20 A. Yes.

21 Q. Now, what I'm trying to do here is this:

22 I'm trying to work with you, understanding that you

23 currently don't know what you meant by

24 "refurbished." Okay?

25 A. Okay.

1 Q. Would you agree that whatever you meant by
2 "refurbished," one of the things that you were
3 concerned about was, was the customer doing whatever
4 that meant to simply save on cost?

5 Would you agree that that was -- that was
6 in your mind?

7 A. As of today, I could say -- I could guess
8 that, yeah.

9 Q. You guess that because that's a fair
10 reading of those words; right?

11 A. Yes.

12 Q. So my question is this, sir: As of that
13 time frame, did you have any concern about the fact
14 that these customers were using instruments that
15 were being changed in some way, whether it's
16 reprogrammed or resharpened by Rebotix or other
17 third parties, simply to save themselves some money?

18 A. I don't recall. And if I had to take a
19 guess, it was we wanted to understand why they're
20 using anything besides the validated instruments
21 from Intuitive.

22 Q. And when you were trying to understand
23 that, sir, did you ever come to the understanding
24 that these companies were telling you, look, you
25 know, we would rather not have to spend the amount

1 of money that you are charging them to replace those
2 instruments after ten uses?

3 MS. LENT: Objection.

4 THE WITNESS: Yeah, can you rephrase that?
5 I'm not sure I understand.

6 BY MR. ADAMS:

7 Q. Were you told by customers that they did
8 not want to have to spend the amount of money that
9 you were charging them to replace instruments after
10 ten uses?

11 A. I don't recall.

12 Q. Were customers telling you in any way that
13 their use of Rebotix to repair instruments was based
14 on their desire to save money?

15 A. I don't recall.

16 Q. Do you recall at any point having internal
17 discussions about the fact that customers were
18 turning to Rebotix and/or other third parties
19 because they didn't want to have to pay the amount
20 of money that you were charging them to replace the
21 instruments?

22 A. I'm sorry. Can you rephrase that? I'm not
23 quite sure I understand the question.

24 Q. One second.

25 At any point, were you being told by your

1 customers that they were unwilling to pay for the
2 cost of replacing an instrument that they thought
3 they could repair and safely use?

4 MS. LENT: Objection.

5 THE WITNESS: I don't recall.

6 BY MR. ADAMS:

7 Q. At any point, were customers telling you
8 that they thought that it was not unsafe for them to
9 repair instruments rather than replacing them after
10 ten uses?

11 MS. LENT: Objection.

12 THE WITNESS: I don't understand your
13 question.

14 BY MR. ADAMS:

15 Q. At any point, did any of your customers say
16 to you, look, we don't believe it's unsafe for us to
17 repair and refurbish these instruments after ten
18 uses?

19 A. I don't recall.

20 Q. At any point -- well, if a customer had
21 expressed to you that they felt like they could do
22 this, that is if they felt like they could repair
23 safely these instruments, would you try to work with
24 them on that?

25 MS. LENT: Objection.

1 THE WITNESS: Again, I don't recall
2 customers asking about repairs or any of that
3 nature. So I don't want to speculate.

4 BY MR. ADAMS:

5 Q. So your current understanding is you never
6 had any discussions with customers in which the
7 concept of them repairing or -- and then reusing
8 your instruments came up?

9 A. Can you rephrase, again? Sorry. I'm
10 really sorry. I don't quite understand.

11 Q. Are you aware of any situations in which
12 the discussions between Intuitive and the customer
13 was that the customer was explaining to you that
14 they felt it was safe for them to repair and reuse
15 your instruments?

16 MS. LENT: Objection.

17 THE WITNESS: I don't recall.

18 BY MR. ADAMS:

19 Q. If that had happened, if you were aware
20 that there were customers out there that were saying
21 to you, look, we've got this problem; the problem is
22 that we have these counters that tell us that we
23 should only use these for ten lives but, you know,
24 we have found a way to safely repair and reuse
25 these, and we believe it's safe, would you try to

1 work with them to figure out whether or not, in
2 fact, it is safe for them to do that?

3 MS. LENT: Objection.

4 THE WITNESS: Are you asking me as of right
5 now, or like -- are you asking me like a
6 hypothetical question at the moment?

7 BY MR. ADAMS:

8 Q. Yes. I'm asking you a hypothetical
9 question.

10 A. So you're asking me --

11 MS. LENT: Objection.

12 THE WITNESS: I mean, I'm kind of
13 uncomfortable, like, giving a response to a
14 hypothetical.

15 BY MR. ADAMS:

16 Q. I appreciate your discomfort, but I'm
17 entitled to my answer.

18 MS. LENT: Objection.

19 THE WITNESS: I'm sorry. I prefer not to
20 answer a hypothetical. I'm simply uncomfortable
21 answering that.

22 BY MR. ADAMS:

23 Q. Mr. Inacay, I appreciate it, but I'm
24 entitled to an answer.

25 MS. LENT: Objection.

1 THE WITNESS: Can you repeat the question,
2 then?

3 BY MR. ADAMS:

4 Q. I'm going to actually repeat it, but I'm
5 going to repeat it by putting it into context for
6 you. Okay?

7 A. Sure.

8 Q. Earlier in this deposition, you described
9 for me a process that would occur if a customer had
10 a problem with a peel pouch; right?

11 A. Yes.

12 Q. And one of the things you said is that if
13 you learned that a customer had a problem with a
14 peel pouch, you would try to help them solve that
15 problem; right?

16 A. Yes.

17 Q. One of the ways you could help them solve
18 that problem was you could go to a third party and
19 have them design a peel pouch that would be
20 compatible with your instruments; right?

21 A. Yes.

22 Q. You would go through that process by either
23 designing or participating in the design of the peel
24 pouch; right?

25 A. Yes.

1 Q. You would do so to ensure that the peel
2 pouch met specifications that were agreeable to you;
3 right?

4 MS. LENT: Objection.

5 THE WITNESS: Not to me --

6 BY MR. ADAMS:

7 Q. To Intuitive.

8 A. For -- as long as Intuitive, yes, deems
9 these specifications are correct and it's safe,
10 then, yes.

11 Q. And one of the ways that you would ensure
12 that the specs were correct and safe is you would
13 engage in testing to make sure that they were
14 correct and they were safe; right?

15 A. Yes, that is one way.

16 Q. So in that context, you were -- you would
17 be willing to work with your customers to try to
18 come up with a solution to their problem; right?

19 MS. LENT: Objection.

20 THE WITNESS: Can you -- can you restate
21 the question, please?

22 BY MR. ADAMS:

23 Q. In that context, you would work with
24 customers to try to come up with a solution to their
25 problem; right?

1 MS. LENT: Objection.

2 THE WITNESS: Can you rephrase? What do
3 you mean by "work with customers"?

4 BY MR. ADAMS:

5 Q. In that context, you would try to solve the
6 customer's problem by proposing that they use a peel
7 pouch that Intuitive determined was compatible with
8 the Intuitive devices; right?

9 MS. LENT: Objection.

10 THE WITNESS: Again, if you're asking me a
11 hypothetical, in that case, I would say -- I would
12 consult with internal teams; right? Like, it's
13 not -- it's not my decision to be like, this is it.
14 I would -- I mean, I would primarily call a meeting
15 with our customer-facing teams and see if this is a
16 solution that works for the customer.

17 BY MR. ADAMS:

18 Q. When you were describing for me earlier the
19 situation with respect to the peel pouch, were you
20 describing a hypothetical situation, or were you
21 describing an instance in which you, in fact, solved
22 a problem with a customer?

23 MS. LENT: Objection.

24 THE WITNESS: So I -- if you're saying I
25 solved this problem, I did not. It's the company

1 that I simply get the problem that the customer has,
2 and we, as a company, looks for solutions. Whether
3 a solution is appropriate for the customer, that's
4 up to a lot of different teams, including the
5 customer-facing teams.

6 BY MR. ADAMS:

7 Q. When you were describing for me the
8 situation about the customer with the peel pouch
9 problem, was that a hypothetical situation, or was
10 that an actual situation that occurred in which
11 Intuitive as a team solved that problem for the
12 customer?

13 A. That was a real problem that a customer
14 had.

15 Q. In that context, as part of your job, you
16 assisted in solving that customer's problem; right?

17 A. I could say, yes, I assisted in helping the
18 customer.

19 Q. That was your job; right?

20 A. My job is to listen to customers and act
21 appropriately.

22 Q. Part of your job is to try to assist and
23 help customers that come to you with problems;
24 right?

25 MS. LENT: Objection.

1 THE WITNESS: Again, my job is to listen to
2 not only customers but our internal-facing teams,
3 because they may know the customer better than I do.
4 So --

5 BY MR. ADAMS:

6 Q. Part of your -- part of your job is to
7 listen to customers and your customer-facing team;
8 right?

9 A. Yes.

10 Q. And you listen to them to learn if they
11 have any problems; right?

12 MS. LENT: Objection.

13 THE WITNESS: To their problems. What do
14 you mean by "their problems"?

15 BY MR. ADAMS:

16 Q. What I mean is you listen to see whether or
17 not there's any problem that they may have with
18 using your devices.

19 A. Yes, we listen to that, yes. If they have
20 issues with their devices, they -- we have channels
21 to -- to help them.

22 Q. Now, with respect to customers that come to
23 you and say, look, we don't understand why we can't
24 use a refurbished or repaired device, did you
25 consider that to be the customer telling you that

1 they had a problem with something that you wanted
2 them to do?

3 MS. LENT: Objection.

4 THE WITNESS: Again, this is a
5 hypothetical. But, again, most of this information,
6 whether if a customer has a problem with refurbished
7 or reprogrammed instruments, it goes to our
8 customer-facing team.

9 So are you asking me like hypothetically if
10 they asked me, what I would do, or ...

11 BY MR. ADAMS:

12 Q. Well, does that problem -- it goes to
13 the -- withdrawn. Let me ask a better question.

14 To the extent that a customer raises a
15 concern about the use of your position regarding the
16 use of either a repaired or refurbished instrument,
17 that customer's concern goes first to your
18 interfacing -- your customer-interfacing team;
19 right?

20 MS. LENT: Objection.

21 THE WITNESS: Can you rephrase that? I'm
22 not sure I understand.

23 BY MR. ADAMS:

24 Q. Let's take it this way: As of that time
25 frame, which is in the period between January of

1 2019 and up through the time when you moved on to a
2 new post, you became aware of certain customers that
3 were using Rebotix and other third parties to
4 repair, refurbish, reprogram your instruments;
5 right?

6 A. Yes.

7 Q. When you learned about that, you set in
8 place a process to handle that situation; right?

9 A. We've -- so, again, we've had -- the
10 process has been evolving, and I'm not aware of what
11 the process was. I can only tell what you the
12 process was when I was involved.

13 Q. One part of the process involved reaching
14 out to the customer; right?

15 A. For internal facing -- so customer-facing
16 teams, is that what you're asking or me? Again,
17 I -- I don't recall like talking to a customer
18 versus educating our customer teams on these
19 instruments.

20 Q. But whether it's you or your
21 customer-facing team, part of the process when you
22 learn about the situation was to reach out to the
23 customer; right? Either you or your internal
24 customer-facing team; right?

25 A. Yes.

1 Q. In doing that outreach, there were times
2 where the customer would then respond to your
3 outreach; right?

4 A. Yes.

5 Q. In response to your outreach, there were
6 certain customers that were pushing back on your
7 position that their use of these repaired and
8 refurbished instruments were unsafe; right?

9 A. I'm sorry. Can you repeat that? I don't
10 quite understand what you said.

11 Q. In response to your outreach to these --
12 withdrawn. Let me ask a better question.

13 As part of your outreach, one of the things
14 that you consistently told your customers was that
15 their use of a third party to either refurbish or to
16 repair the instruments or reprogram them was unsafe
17 for -- from a patient perspective; right?

18 A. Say that -- sorry, one more time, please.

19 Q. One of the things that you communicated to
20 your customers was that the use of the companies to
21 either refurbish or repair the instruments was
22 unsafe; right?

23 A. The use of instruments that are past their
24 clinical lives poses a patient-safety risk.

25 Q. Some customers push back on that; right?

1 A. From what I remember, yes.

2 Q. And in pushing back, you understood that,
3 at least with respect to those customers, they were
4 telling you, look, you know, we believe that it's
5 fine; it's safe for us to do this -- to use these --
6 these companies to either repair, refurbish, or
7 reprogram these instruments; right?

8 A. From what I recall, yes.

9 Q. What, if anything, did Intuitive do to try
10 to work with those customers to determine whether or
11 not their belief that it was safe for them to do so
12 was a valid belief?

13 A. One more time. Can you -- are you -- can
14 you repeat that?

15 Q. What did you do with respect to a customer
16 that was telling you, look, it's safe for us to do
17 this, to try to figure out whether or not it, in
18 fact, was safe for them to do it?

19 MS. LENT: Objection.

20 THE WITNESS: Can you rephrase that?

21 BY MR. ADAMS:

22 Q. What, if anything, did you do with respect
23 to a customer's statements to you that it was safe
24 for them to use these third-party companies to
25 repair or refurbish your instruments?

1 MS. LENT: Objection.

2 BY MR. ADAMS:

3 Q. Withdrawn. Let me ask a better question.

4 When a company told you that they thought
5 it was safe for them to repair or refurbish your
6 instruments, what, if anything, did you do to work
7 with them to try to determine if it, in fact, was
8 safe for them to do so?

9 A. I can only tell you what I know, and I'm
10 not sure what our customer-facing teams would do if
11 there was push back from customers. But on my end,
12 I understand that the process -- the next steps is
13 to provide a customer letter that explicitly calls
14 out every single patient safety and, in general,
15 risk into using instruments past their validated
16 lives.

17 So to my understanding, the customer letter
18 would be the next step in the process. I'm not sure
19 what our customer-facing teams would do.

20 Q. At any point, do you know if Intuitive ever
21 took it upon themselves to try to determine the
22 safety of using an instrument that was repaired by
23 Rebotix?

24 MS. LENT: Objection.

25 THE WITNESS: Can you repeat real quick?

1 BY MR. ADAMS:

2 Q. At any point, did you -- did Intuitive do
3 anything to determine whether or not it was safe to
4 use an instrument that was repaired by Rebotix?

5 MS. LENT: Objection.

6 THE WITNESS: I'm not sure.

7 BY MR. ADAMS:

8 Q. When you say you're "not sure," is it
9 because you think it could have been done?

10 A. I'm just one person. So internal teams
11 could do other actions that I'm not aware of. So I
12 just don't know.

13 Q. Have you ever been told by anyone at
14 Intuitive that they had done testing to try to
15 figure out if a Rebotix-repaired instrument was safe
16 for patient use?

17 MS. LENT: Objection.

18 THE WITNESS: Can you rephrase that?

19 BY MR. ADAMS:

20 Q. Were you told by anyone at Intuitive that
21 Intuitive had done testing to determine whether or
22 not it was safe to use a Rebotix instrument -- a
23 Rebotix-repaired instrument?

24 MS. LENT: Objection.

25 THE WITNESS: I don't -- I don't recall --

1 sorry. One -- one more time. I'm sorry, like --

2 can you rephrase one more time? I'm not sure I

3 understand.

4 BY MR. ADAMS:

5 Q. Well, you didn't at any point -- what I'm

6 trying to figure out is whether or not there was any

7 attempt by Intuitive to try to work with its

8 customers to see whether or not its use of

9 instruments that were repaired by Rebotix was a safe

10 use, or safe practice. That's what I'm trying to

11 understand.

12 And my question to you was: Did anyone at

13 Intuitive of tell you that they, in fact, had tested

14 to see whether or not it was safe for hospitals to

15 use instruments or EndoWrist instruments that had

16 been repaired by Rebotix?

17 MS. LENT: Objection.

18 THE WITNESS: I'm not sure.

19 BY MR. ADAMS:

20 Q. And when you say "I am not sure," what do

21 you mean by that?

22 A. Well, again, I'm only one person; right? I

23 only know what I know. I don't know what other

24 teams have done in the past. I don't know. They

25 could have done testing in the past and they simply

1 didn't tell me.

2 Q. My question was designed to try to figure
3 out whether or not you were ever informed of that,
4 were you ever told either orally or in writing.

5 So I understand you're one person. I
6 understand that you only know what you know. So I'm
7 trying to sort of hone in on this specific thing.

8 Were you ever told, either orally or in
9 writing, that someone at Intuitive or a team or
10 anyone had done testing to try to figure out whether
11 or not it was safe to use an instrument that had
12 been repaired by Rebotix?

13 MS. LENT: Objection.

14 THE WITNESS: From what I recall, I don't.

15 MR. ADAMS: Let's take a short break.

16 THE VIDEOGRAPHER: Off the record. The
17 time is 12:50.

18 (Recess taken from 12:51 to 1:31.)

19 THE VIDEOGRAPHER: Back on the record. The
20 time is 1:32.

21 MR. ADAMS: I'm going to mark next
22 Exhibit 5. It's the document in the folder that's
23 titled 8/13/19 Harvey.

24 (Marked for identification purposes,
25 Exhibit 5.)

1 MR. ADAMS: I'm going to screen-share.

2 BY MR. ADAMS:

3 Q. I put on the screen in front of you a
4 document. At the top it says 9/3/2019 e-mail
5 from -- it's to Matt Davis.

6 Do you see that?

7 A. Yes.

8 MS. LENT: Julian, what were you calling
9 this one? 8/13/19 Harvey, is that what you said?

10 MR. ADAMS: It's Exhibit 5, but it's
11 dated -- the document is 8/13/19 Harvey.

12 MS. LENT: Thank you. I found it.

13 BY MR. ADAMS:

14 Q. If you scroll down to the second e-mail
15 from the top, it's an e-mail from Matt Davis and
16 it's sent to you, Mr. Inacay.

17 Do you see that?

18 A. I do.

19 Q. Who is Matt Davis, again?

20 A. It looks like he's the field service
21 manager for Central Region, according to his title.

22 Q. Now, it says here from him, "Good morning,
23 AJ. Please see below the questions from Jennifer
24 Harris, CSM."

25 Do you see that?

1 A. Yes.

2 Q. So what he's doing here is he's directing
3 you some questions from somebody named Jennifer
4 Harris; right?

5 A. Yep.

6 Q. If you scroll down one e-mail, it says
7 September 3rd, 2019, Jennifer Harris to Mr. Davis:

8 "I think this is something that needs
9 to be discussed with the surgeons. Can
10 we move forward with that?"

11 Do you see that?

12 A. Yes.

13 Q. And when we scroll further, to the last
14 e-mail in this chain -- or not the last one but --
15 let's go to the last one in the chain, which may be
16 the first in order.

17 There's an e-mail from Matt Davis dated
18 August 8, 2019. And it's to somebody named
19 JShopfor@ccsurg.com, and also to Erin Young and
20 Sherry Harvey.

21 Do you see that?

22 A. I do see that, yeah.

23 Q. Now, in the e-mail from Mr. Davis,
24 Mr. Davis says that he is the field services manager
25 for Intuitive; right?

1 A. Yes.

2 Q. And he wants to set up a meeting to discuss
3 their system service and recent usage of
4 unauthorized instrument on July 15th and July 22nd.

5 Do you see that?

6 A. Yes, I can read that.

7 Q. Do you have a recollection of learning
8 about this hospital's use of what you were
9 considering to be an unauthorized instrument?

10 A. Not -- I don't, no.

11 Q. Would this have been something that would
12 have been shared with you and discussed internally
13 with you before an e-mail was sent out to a
14 customer?

15 A. I don't recall speaking with Matt prior to
16 reaching out. I don't recall.

17 Q. It appears as though, if you look at the
18 e-mail that's just above this, there's an e-mail
19 dated August 13, 2019, from Ms. Harvey to Mr. Dais.

20 Do you see that?

21 A. Okay. Yeah.

22 Q. And the first sentence, it says, "Thank you
23 for your phone call and e-mail"; right?

24 A. M-hm.

25 Q. Yes?

1 A. I see it, yes.

2 Q. So that sentence would suggest to you that
3 Mr. Davis both spoke to Ms. Harvey on the phone and
4 also sent you an e-mail; right?

5 A. So -- sorry, what was your question?

6 Q. That first sentence would suggest to you --
7 well, withdrawn.

8 That first sentence tells you that
9 Mr. Davis spoke to Ms. Harris on the phone, and he
10 also sent an email; right?

11 MS. LENT: Objection.

12 THE WITNESS: Sent me an e-mail?

13 BY MR. ADAMS:

14 Q. Say that, again.

15 A. Sent me an e-mail?

16 Q. No. The first sentence of Ms. Harris's
17 e-mail tells you that Mr. Davis spoke to Ms. Harris
18 on the phone and also sent her an e-mail.

19 A. And sent her an e-mail, yes.

20 Q. Now, Ms. Harris then writes:

21 "In order to reduce the cost of
22 running Intuitive Surgical robots, we are
23 starting a cost reduction program with
24 Restore Robotics."

25 Do you see that?

1 A. Yes, I see that.

2 Q. Do you remember reading this e-mail around
3 this time frame when you were sent the e-mail chain?

4 A. I don't remember this e-mail.

5 Q. Do you have any questions about the fact
6 that at least this customer was telling you,
7 Intuitive, through Mr. Davis, that they were
8 concerned about costs?

9 A. Again, I don't remember this e-mail. But
10 as I read it now, it looks like they are -- they're
11 looking to reduce the cost of running Intuitive
12 Surgical robots. That's what it reads.

13 Q. Ms. Harvey then says that:

14 "This company called Restore Robotics
15 safely repairs robot instruments after
16 their initially recommended usage and
17 return instruments to us."

18 Do you see that?

19 A. Yes. I could see it.

20 Q. "So that -- so we can extend their use and
21 realize important cost savings."

22 Do you see that?

23 A. I see it, yes.

24 Q. At the time that you were the program
25 marketing manager that was involved in dealing with

1 issues about -- with respect to customers' use of
2 third-party companies to refurbish or reprogram or
3 repair instruments, did you ever understand that one
4 of the reasons they were doing so was to safely
5 of -- was to recognize or realize important cost
6 savings?

7 MS. LENT: Objection.

8 THE WITNESS: Can you rephrase the
9 question?

10 BY MR. ADAMS:

11 Q. During the time that you were the manager,
12 either overseeing or involved in the process of
13 dealing with third parties refurbishing or repairing
14 of your instruments, did you ever learn that
15 customers, that is the hospitals, were using those
16 third parties in order to realize important cost
17 savings?

18 MS. LENT: Objection.

19 THE WITNESS: I don't remember, no.

20 BY MR. ADAMS:

21 Q. When you got this e-mail on September 3rd,
22 2019, it's fair to say that you got the e-mail from
23 Mr. Davis and then you scrolled down and you read
24 what this -- why he was sending you this
25 information; right?

1 A. Yes.

2 Q. It's likely that you read the e-mail that
3 Ms. Harris sent to Mr. Davis dated August 13, 2019;
4 right?

5 A. If I had to guess, yes.

6 Q. And that's because part of your job is to
7 listen to your -- to the customer; right?

8 A. Yes.

9 Q. Listening to the customer includes when
10 they send e-mails like the one Ms. Harvey sent,
11 reading that e-mail; right?

12 A. Yes.

13 Q. It is highly unlikely that you would be
14 sent an e-mail from a customer like this and you
15 chose not to read it; right?

16 A. Yes.

17 Q. In this e-mail, Ms. Harvey is asking that
18 Intuitive not interfere with their program; right?

19 A. Yes.

20 Q. She says that:

21 "This program is important in our
22 efforts to provide the best possible care
23 for our patients."

24 Right?

25 A. Yes, I see that.

1 Q. When you read that, did you listen to those
2 words?

3 MS. LENT: Objection.

4 THE WITNESS: I see those words.

5 BY MR. ADAMS:

6 Q. You read them; right?

7 A. Yes, we read them.

8 Q. Did you consider them?

9 A. What do you mean "consider"?

10 Q. Well, did you -- did you read the words and
11 then, in any way, consider those words in any of
12 your future actions with this customer?

13 A. Are you asking me or -- because this was to
14 Matt. So are you saying did I do anything with
15 these words?

16 Q. Mr. Inacay, let me ask you this question:
17 To the extent that a customer had a question about
18 this that they raised with the internal -- the
19 external-facing person like Matt, Matt was directed
20 to bring those issues to you; right?

21 A. Yes.

22 Q. Okay. So when it was brought to you, it
23 was brought to you for a reason; right?

24 A. Yes.

25 Q. It was brought to you to try to now work

1 with Matt or somebody at Intuitive to try to figure
2 out how to deal with this issue; right?

3 A. Yes.

4 Q. And trying to figure out how to deal with
5 this issue, my question is did you in any way
6 consider what this customer was telling you? That
7 is that their program was important in their efforts
8 to provide the best possible care for our patients,
9 or did you just disregard that?

10 A. I don't recall at this time what
11 specifically I did, but, again, I'm not a one-man
12 team. If this is the feedback -- and, again, I
13 don't recall -- if this is the feedback we received,
14 I'm not going to -- I'm not going to not tell
15 anyone. I would say this is what I've -- this is
16 what I received and we would discuss, as a team,
17 like, what is the best path forward.

18 Q. What --

19 A. So I don't recall what did -- how did Matt
20 use this or what -- how did I use this at that time,
21 so ...

22 Q. Let me ask you a question, Mr. Inacay.

23 If Matt were to then go back to talk to
24 Ms. Harvey or anyone at this Crescent City Surgical
25 Center about this, would he be doing so on his own,

1 or would he be doing so based on input that he
2 received from you?

3 A. It would depend on where we are in the
4 process. We have a process for this.

5 Q. Right. And based on the process, what
6 you've got is you've got -- from what we can tell,
7 you've got Mr. Davis reaching out to the folks at
8 the surgical center there on August 8, 2019; right?

9 A. Yes.

10 Q. You've got Mr. Davis saying that you've
11 learned about their use of an unauthorized
12 instrument; right?

13 A. Yes.

14 Q. You've then got a follow-up responsive
15 e-mail sent a few days later, right, that we've
16 looked at, dated August 13, 2019; correct?

17 A. Yes.

18 Q. Now, part of your process after you
19 received an e-mail like this is to do what?

20 A. We would reiterate what are the
21 patient-safety risks for our instruments if they're
22 used beyond the validated amount of lives on them.
23 We firmly believe that.

24 Q. So part of your --

25 A. And --

1 Q. Part of your process is to receive feedback
2 from your customer like this, and then to respond
3 with just reiterating what your position is on their
4 use of these -- these instruments that have been
5 repaired; right?

6 MS. LENT: Objection.

7 THE WITNESS: Sorry. Can you repeat that
8 question?

9 BY MR. ADAMS:

10 Q. Part of your process is to receive input or
11 response from a customer like this and then -- to
12 then respond by reiterating what your position is
13 regarding their use of repaired Rebotix instruments;
14 right?

15 MS. LENT: Objection.

16 THE WITNESS: So, again, I don't recall how
17 we use this information; right? Like, customers can
18 give us a ton of information and feedback, and we
19 collect that and we discuss it as a team; right? So
20 I don't know in this instance what he did with this;
21 right?

22 So for me, in the process that we had at
23 that time, the next step would be to reiterate the
24 patient-safety implications for using instruments
25 that are beyond their validated instrument lives.

1 And, if needed, we would have a customer letter that
2 would be physically within the hands of the customer
3 that provides clarification of some of those risks.

4 BY MR. ADAMS:

5 Q. In Ms. Harvey's letter, she asks a few
6 questions of Intuitive; right?

7 A. Yes.

8 Q. You would have read these questions; right?

9 A. I would likely have read them, yes.

10 Q. I want to scroll down to the second bullet
11 point. She says in the second bullet point:

12 "You also point out the need to
13 discuss how to ensure ongoing patient
14 safety at the highest levels of product
15 performance."

16 Right? Do you see that?

17 A. Yes.

18 Q. Then she says:

19 "We assume you're referring to the
20 use of robotic instruments."

21 Right?

22 A. Yes, I see that.

23 Q. Then she asks:

24 "Please provide data that
25 demonstrates the patient safety is

1 impacted by the safe and controlled reuse
2 of robotic instruments."

3 Do you see that?

4 A. I see that.

5 Q. You read that at the time?

6 A. Likely read it, yes.

7 Q. Did you consider it?

8 A. What do you mean by "consider"?

9 Q. Well, did you read and it ignore it, or did
10 you read and it consider it in formulating what your
11 response was going to be to her?

12 A. I read it, most likely. And then I most
13 likely brought it to a team that collects a bunch of
14 feedback on this. Right?

15 So if there is a request like this, I don't
16 know what you expect from me. It's not likely that
17 I would send out data like on -- it's not -- I don't
18 have that jurisdiction. I would have to go to the
19 team and be like, here's what we're hearing. What
20 should we do? Right. So ...

21 Q. Well, at any point, did you ever go to the
22 team and talk to the team about the fact that a
23 customer was requesting that you provide them with
24 data that demonstrates that patient safety was
25 impacted by the safe, controlled repair and reuse of

1 robotic instruments?

2 A. I don't recall. I can probably tell you
3 what may have happened, but I don't recall
4 specifically what I -- what I did with this e-mail,
5 so ...

6 Q. What can you tell me may have happened?

7 A. I mean, if I had to guess, I would have
8 brought it up first off to my manager and said,
9 here's feedback that we received. And then he would
10 provide me guidance on who should get their eyes on
11 this. Right? I mean, that's most likely what -- if
12 I had to guess what I would do.

13 Q. And you would have followed the advice
14 and/or counsel of your manager; right?

15 A. I mean, I would -- we would have a
16 discussion, but like if he told me to do something
17 odd, I would have a discussion with him.

18 Q. Did you or anyone at Intuitive ever provide
19 data to Ms. Harvey that demonstrated that patient
20 safety was impacted by the safe, controlled repair
21 and reuse of robotic instruments?

22 A. I don't know.

23 Q. At any point during the time that you've
24 worked at Intuitive, that you've worked there, have
25 you ever seen any data that demonstrated that

1 patient safety was impacted by the safe, controlled

2 repair and reuse of robotic instruments?

3 A. If you're asking me if I looked at the data

4 as a product marketing manager and I can understand

5 what that data meant then, no. I haven't seen that

6 data.

7 Q. Have you ever asked for it?

8 A. No.

9 Q. One way that you could understand it is if

10 you asked for it and you had somebody explain it to

11 you; right?

12 A. Is that like a -- hypothetically, I guess?

13 Q. One way for you to be able to understand

14 that data, if it existed, was to ask someone provide

15 it to you and have that person explain it to you;

16 right?

17 MS. LENT: Objection.

18 THE WITNESS: Can you rephrase that?

19 BY MR. ADAMS:

20 Q. I'm sort of responding to part of your

21 answer about not being able to understand that data.

22 And so I'm trying to figure this out from you.

23 If you were interested in getting that

24 information, one thing you could have done is you

25 could have asked for the data, and if you didn't

1 understand it, have somebody explain it to you;

2 right?

3 MS. LENT: Objection.

4 THE WITNESS: I mean, again,

5 hypothetically, I guess.

6 BY MR. ADAMS:

7 Q. And at any point while you worked at

8 Rebotix, did you ever ask anyone for data that

9 demonstrated the patient safety -- that patient

10 safety as impacted by the safe, controlled repair

11 and reuse of robotic instruments, and to the extent

12 that you got that data, you then asked them to

13 explain it to you?

14 MS. LENT: Objection.

15 THE WITNESS: I don't recall, but I would

16 say no.

17 BY MR. ADAMS:

18 Q. Now, why is it that you never either asked

19 for or received data that demonstrated that patient

20 safety was impacted by the safe, controlled repair

21 and reuse of robotic instruments?

22 A. Again, if I had to guess at this time, it's

23 because I wouldn't understand it; right? And I

24 wouldn't -- it's Intuitive; right? If they -- if

25 the team states this, I mean why would I -- why

1 would I refute that; right? I trust my teammates.

2 Q. Well, one of the things that Ms. Harvey
3 writes here is this, last sentence:

4 "Patient safety is our first concern,
5 but we do not act on vendor statements
6 about safety; we act on science."

7 Do you see that?

8 A. Yes, I see it.

9 Q. You think that's a reasonable statement for
10 Ms. Harvey to make?

11 MS. LENT: Objection.

12 THE WITNESS: I mean, I don't know who
13 Ms. Harvey is and what their definition of "patient
14 safety" is, or like -- I don't know what she meant
15 by this. She wrote this, not me.

16 BY MR. ADAMS:

17 Q. Do you think it's reasonable for
18 Ms. Harvey, who is a chief nursing officer at
19 Crescent City Surgical Center, to tell you that with
20 respect to patient safety, they don't act on vendor
21 statements, but they act on science?

22 Is that a reasonable statement for her to
23 make?

24 MS. LENT: Objection.

25 THE WITNESS: I don't know. I don't know

1 Ms. Harvey and, like, their program. I'm sorry. I
2 don't know.

3 BY MR. ADAMS:

4 Q. Do you think it's reasonable when we're
5 trying to figure out with respect to whether or not
6 the reuse of EndoWrists that have been repaired is
7 safe for patients that you should look to science to
8 determine that?

9 MS. LENT: Objection.

10 THE WITNESS: Can you rephrase that?
11 Sorry.

12 BY MR. ADAMS:

13 Q. Do you think that it's reasonable to look
14 to science to determine whether or not it is safe to
15 use repaired robotic instruments?

16 MS. LENT: Objection.

17 THE WITNESS: I don't really know what
18 you're trying to ask. Sorry.

19 BY MR. ADAMS:

20 Q. One of the things that you do to make sure
21 that your products are safe is you test them; right?

22 MS. LENT: Objection.

23 THE WITNESS: I mean, again, I'm not a
24 testing expert, so ...

25 ///

1 BY MR. ADAMS:

2 Q. One of the things that Intuitive does to
3 make sure its instruments are safe is that it tests
4 those instruments; right?

5 A. Yes.

6 Q. It gathers data based on those testing;
7 right?

8 A. Yes.

9 Q. Would you agree that the use of data to
10 determine safety is relying upon science as opposed
11 to just random statements?

12 MS. LENT: Objection.

13 THE WITNESS: Again, that's up for --
14 that's up for the teams to decide. I mean, I'm not
15 a data expert. I don't know what else needs to be
16 done besides data. Right? Like, that's -- that's
17 for them to decide on what makes -- when is the
18 instrument safe. Right? So those are up to the
19 engineers.

20 BY MR. ADAMS:

21 Q. And you understand that your engineers and
22 your team members, in determining when an instrument
23 is safe, is that they rely on the science; right?

24 MS. LENT: Objection.

25 THE WITNESS: I don't know what they rely

1 on. It's up to them. Right? Like I don't know
2 what their criterias are, requirements. That's
3 their expertise, not mine.

4 BY MR. ADAMS:

5 Q. Well, you know that they rely on the
6 testing that they do; right?

7 A. Yes.

8 Q. And they rely on the data that they get
9 from the testing; right?

10 A. Yes.

11 Q. Can we come to some agreement in this
12 deposition that relying on data from testing is the
13 same as saying that you're relying on the science?

14 MS. LENT: Objection.

15 THE WITNESS: Again, that's not my call.
16 It's really up to the engineers to decide that.
17 Like, I don't -- I honestly don't know ...

18 BY MR. ADAMS:

19 Q. What don't you know? You can finish that
20 sentence.

21 A. There are going to be requirements that I'm
22 not aware of. Right? And so it's up to the teams
23 to ensure that those requirements are made to ensure
24 that our instruments are safe. I don't know all of
25 those requirements and how they are decided upon.

1 Q. Would you agree that, in part, that they
2 rely on the science to tell them whether or not a
3 device is safe?

4 MS. LENT: Objection.

5 THE WITNESS: What do you mean "science"?
6 Can you give me an example? What do you define
7 "science" as?

8 BY MR. ADAMS:

9 Q. "Science," in this context, would be
10 testing and data that's derived from the testing.
11 That's what I mean by "the science."

12 MS. LENT: Objection.

13 THE WITNESS: Again, I don't know. You
14 would have to ask the engineers on that, right, and
15 our regulatory teams. They would know better than I
16 would.

17 BY MR. ADAMS:

18 Q. They may know better than you, but you also
19 have some understanding as to what they rely on;
20 right?

21 A. Yes.

22 Q. You know that in determining whether or not
23 your devices are safe they do tests; right?

24 MS. LENT: Objection. Asked and answered,
25 twice.

1 MR. ADAMS: I'm not sure what's happening
2 here.

3 BY MR. ADAMS:

4 Q. Are you going to answer it, or do you want
5 me to restate it? Or are you just going to ignore
6 the question?

7 A. Sorry. I didn't get what --

8 THE WITNESS: Can you repeat what you said,
9 Karen?

10 MS. LENT: I just said that the question
11 had been asked and answered twice, and I objected to
12 it being repeatedly asked.

13 But if you can answer it or you have
14 anything else to add, you can do that.

15 THE WITNESS: I have nothing else to add.
16 I can reiterate my answer.

17 BY MR. ADAMS:

18 Q. What's your answer, again, sir?

19 MS. LENT: Can you ask the question, again,
20 please.

21 MR. ADAMS: I will.

22 BY MR. ADAMS:

23 Q. You know that, at least in part, your
24 engineers rely upon tests and data derived from the
25 tests in determining whether or not your instruments

1 are safe; right?

2 A. Again, it's really up to the engineers and
3 our regulatory teams to decide what constitutes as
4 when our instruments are safe for patients. I don't
5 make that call. It's likely part of it is data, but
6 there could be a slew of other things. I don't
7 know.

8 Q. It's likely that part of what they relied
9 upon is data derived from tests that they do; right?

10 A. It's likely, yes.

11 Q. It wouldn't be unreasonable for a customer
12 to try to get you from the data that may support
13 your position that what they were doing was unsafe;
14 right?

15 MS. LENT: Objection. Asked and answered.

16 THE WITNESS: That's not my call. Like if
17 the customer asked me for X, Y, and Z, I'm not just
18 going to be like, yes, here it is. Especially when
19 I don't know all of the answers. Right? I have to
20 go back to the team and we decide. Right? Like ...

21 BY MR. ADAMS:

22 Q. My question wasn't about whether or not it
23 was your call, or whether or not the team decided.
24 It was more about whether or not it's unreasonable
25 for a customer to ask you for that information.

1 You would agree that when a customer is
2 being told that what they're doing is not safe, it's
3 reasonable for them to push back and say, well, show
4 me the data that demonstrates that it's not safe?
5 That's reasonable; right?

6 MS. LENT: Objection.

7 THE WITNESS: I don't know.

8 BY MR. ADAMS:

9 Q. You do know that you never provided that
10 data to any of your customers; right?

11 MS. LENT: Objection. Asked and answered.

12 THE WITNESS: That I provided data?

13 BY MR. ADAMS:

14 Q. You do know that you nor anyone that worked
15 with you or for you provided any data to any of your
16 customers to demonstrate that their use of robotic
17 instruments that were repaired by Rebotix was unsafe
18 for patient use; right?

19 MS. LENT: Objection. Asked and answered.

20 THE WITNESS: Can you rephrase?

21 MR. ADAMS: No, I can't. Can I have it
22 reread, please?

23 (Record read as follows: "You do know that
24 you nor anyone that worked with you or for
25 you provided any data to any of your

1 customers to demonstrate that their use of
2 robotic instruments that were repaired by
3 Rebotix was unsafe for patient use;
4 right?")

5 MS. LENT: Same objections.

6 THE WITNESS: So you --

7 MS. LENT: You can answer.

8 THE WITNESS: Sorry. Can you repeat one
9 more time, then?

10 THE STENOGRAPHER: Would you like me to
11 read it back, again?

12 THE WITNESS: Yes, please. Sorry about
13 that.

14 (Record read as follows: "You do know that
15 you nor anyone that worked with you or for
16 you provided any data to any of your
17 customers to demonstrate that their use of
18 robotic instruments that were repaired by
19 Rebotix was unsafe for patient use;
20 right?")

21 THE WITNESS: I don't know.

22 BY MR. ADAMS:

23 Q. In her e-mail, Ms. Harvey then writes, in
24 the third bullet point:

25 "We have audited the quality system

1 and testing protocols of our robotics
2 instrument repair partner as well as
3 several independent reports about
4 materials degradation, and we find no
5 indication that the functionality of
6 robotic instruments is compromised when
7 re-using the instruments beyond the
8 limited number of times suggested by
9 Intuitive Surgical."

10 Do you see that?

11 A. Yes, I see it.

12 Q. Now, what, if anything, did you do with
13 that information when you received it?

14 A. I don't recall.

15 Q. Did you ignore it?

16 A. I don't recall.

17 Q. Did you or anyone at Intuitive ever ask to
18 see from your customers any information that they
19 had uncovered to show that there was no material
20 degradation or functionality in your instruments
21 that had been repaired and reused?

22 MS. LENT: Objection.

23 THE WITNESS: I'm not sure. Can you
24 rephrase that? I don't understand.

25 ///

1 BY MR. ADAMS:

2 Q. Did you ever ask any of your customers to
3 provide you with information that they had uncovered
4 that showed that there was no materials degradation
5 or indication that any functionality of the
6 instruments were compromised when the instruments
7 were repaired?

8 A. I don't recall.

9 Q. Is that information that would have been
10 important to any decision that you made with respect
11 to how you responded to this issue?

12 A. I'm sorry. Can you rephrase that?

13 Q. Yes.

14 Did Intuitive, at any point, care about
15 figuring out whether or not the repair of the
16 instruments actually caused -- actually posed a
17 safety risk?

18 MS. LENT: Objection.

19 THE WITNESS: I mean, I don't know. Like,
20 I'm one person. You're asking me for Intuitive? I
21 don't know.

22 BY MR. ADAMS:

23 Q. Well, on behalf of Intuitive, you were
24 responsible for how you -- your company was relating
25 and communicating to its hospital customers; right?

1 MS. LENT: Objection.

2 THE WITNESS: I'm not sure I understand
3 what your question is.

4 BY MR. ADAMS:

5 Q. Part of your job at Intuitive was to
6 participate in the process of communicating with
7 hospitals that were using repaired EndoWrists;
8 right?

9 MS. LENT: Objection.

10 THE WITNESS: I mean, for this instance?
11 Again, I don't recall what I did with this
12 information, but I could say, like, my job was to
13 educate our internal teams on the patient safety
14 risks of using instruments that are past their
15 validated instrument lives.

16 BY MR. ADAMS:

17 Q. In order to determine whether or not the
18 use of a Rebotix repaired instrument was unsafe,
19 would you agree that Intuitive could have conducted
20 its own testing of those repaired instruments?

21 MS. LENT: Objection.

22 THE WITNESS: I don't know what Intuitive
23 would have -- like, again, I'm only one person.

24 BY MR. ADAMS:

25 Q. As part of your job, was it important to

1 you when you were representing to customers, or at
2 least instructing or requesting that your other
3 coworkers respond to customers, that you were giving
4 them information that was truthful?

5 A. Can you rephrase?

6 Q. Was it important to you that in addressing
7 customers with respect to this issue, that you were
8 giving them information that was truthful?

9 A. Sorry. I still don't quite understand.

10 What are you trying to say?

11 Q. Is it important for you to tell the truth?

12 A. Yes.

13 Q. When Intuitive responded to customers, they
14 were doing so based on either your direction or with
15 your guidance; right?

16 MS. LENT: Objection.

17 THE WITNESS: Can you repeat that?

18 BY MR. ADAMS:

19 Q. When Intuitive was responding to its
20 hospital customers, with respect to this issue, they
21 were doing so either based on your direction or with
22 your guidance; right?

23 MS. LENT: Objection.

24 THE WITNESS: I mean, I can say -- again,
25 my role was to educate our internal teams on this

1 issue and what does it mean from the patient --
2 patient-risk perspective.

3 So, again, I don't know what is the
4 question you're trying to ask.

5 BY MR. ADAMS:

6 Q. Well, you were part of the team that
7 crafted what the response was going to be to
8 customers on this issue; right?

9 A. So if -- so you're saying for this
10 specific -- this specific e-mail? Is that what
11 you're asking? If ...

12 Q. Well, either this e-mail or any
13 communication that you were having with hospitals on
14 what you were considering to be an unauthorized use
15 of your instruments.

16 You were a part of the team that crafted
17 whatever your response to the hospital would have
18 been; right?

19 A. Yes.

20 Q. In crafting that response, was it important
21 to you that you were providing them with truthful
22 information?

23 A. Yes.

24 Q. One of the things that you were telling
25 them in your response to them was that you believed

1 it was unsafe for them to be using instruments that
2 were repaired or refurbished or reprogrammed by
3 companies like Rebotix; right?

4 A. Again, I would have to -- I would have to
5 go back to our customer letter, right, that states
6 in general the risks involved.

7 Q. Right. And in that customer letter, you
8 were saying to them that it's risky for them to do
9 that; right?

10 A. It's risky to use instruments that are
11 beyond the validated uses -- the validated lives.
12 Right? So that's -- from what I recall, that is
13 what's written in our customers letters and in our
14 communications.

15 Q. You didn't do anything to try to figure out
16 whether or not those customers could safely repair
17 those instruments and use them without any risk to
18 patient safety; right?

19 MS. LENT: Objection. Asked and answered.

20 THE WITNESS: Can you repeat that, please?

21 BY MR. ADAMS:

22 Q. You didn't do anything to determine whether
23 or not it was safe for your hospital customers to
24 repair your EndoWrists and use them in their
25 surgeries; right?

1 MS. LENT: Objection. Asked and answered.

2 THE WITNESS: I don't recall what I did
3 with this e-mail. And, again, it's likely that I
4 took this e-mail and brought it up to a team to go
5 through it. So I don't know what else to say beyond
6 that.

7 BY MR. ADAMS:

8 Q. Ms. Harvey asked Intuitive to provide test
9 results, studies of data that documented why
10 instruments should be limited to 10 or 15 uses.

11 Do you see that?

12 A. Yes, I see that.

13 Q. Do you know whether or not you provided
14 that information to Ms. Harvey?

15 A. Sorry. Can you repeat the question?

16 Q. Did you provide that information to
17 Ms. Harvey?

18 A. From what I recall, no.

19 Q. Why not?

20 A. I mean, again, I'm just one person. And if
21 she asked for this, then I would bring it up to the
22 team and we would decide on an appropriate response.
23 And, again, like, I wouldn't know where the results
24 would be or how to interpret them. Like, I'm not --
25 I'm not equipped to do that. So I would have to

1 discuss with the internal team on this. Right?

2 So --

3 Q. From what you recall, you did discuss with
4 them whether or not you should provide this data to
5 Ms. Harvey; right?

6 A. I don't recall. Again, I don't recall how
7 we used this e-mail.

8 Q. But you do know that you never provided
9 that data to her, though; right?

10 A. I can recall that I did not provide any
11 data to Ms. Harvey.

12 Q. Did you ask any of the people that worked
13 for you -- withdrawn. I'm going to ask a better
14 question.

15 Did you ask any of the external facing
16 Intuitive people that were part of your team to
17 provide that information to Ms. Harvey?

18 A. I don't recall.

19 Q. Do you know whether or not anyone else at
20 Intuitive asked that that information be provided to
21 Ms. Harvey?

22 A. I don't know.

23 Q. Did you -- withdrawn.

24 Did you participate in crafting the process
25 by which -- withdrawn.

1 Did you participate in determining the
2 process that would be used to address the situation
3 where you learned of a customer that was using an
4 instrument that was repaired or refurbished by a
5 company like Rebotix?

6 A. What do you mean "crafted"?

7 Q. Created, drafted, wrote.

8 A. I was part of the team.

9 MR. ADAMS: I'll mark as Exhibit 6. It is
10 a document that is titled "Inacay Slide Unauthorized
11 IA remanufactured."

12 I'm going to screen-share this.

13 (Marked for identification purposes,
14 Exhibit 6.)

15 BY MR. ADAMS:

16 Q. Screen-shared for you a slide that on the
17 first page it says Unauthorized I&A Remanufacturing.

18 Do you see that?

19 A. Yep.

20 Q. And then it has your name on it, AJ Inacay?

21 A. Yes.

22 Q. Did you create this slide, sir?

23 A. From what I remember -- can I see the rest
24 of this presentation?

25 Q. Scroll through. The first and second page.

1 A. Okay.

2 Q. This is the third page of the slide.

3 A. Okay.

4 Q. Have you seen enough to tell me whether or
5 not you created this, or do you need to see more?

6 A. Can I see more, please, if that's okay?

7 Q. Sure. This is the fourth page.

8 A. Okay. Is there any more?

9 Q. Fifth page?

10 A. Okay.

11 Q. Sixth page. Seventh page.

12 A. Yes. So I can say this is -- I likely
13 created this slide, yes.

14 Q. In the last slide -- I want to point you to
15 the last part, this last bullet point. It says:

16 "A patient safety implications letter
17 may be created for you by reaching out to
18 AJ Inacay."

19 Do you see that?

20 A. Yes.

21 Q. What does that mean?

22 A. So internal -- our customer-facing teams
23 would reach out to me. And then I would -- I would
24 request a customer letter to be created, a patient
25 safety implications letter to be created to our

1 legal team.

2 Q. The words on this slide says:

3 "The patient safety implications
4 letter may be created for you by reaching
5 out to AJ Inacay."

6 Do you see that?

7 A. Yes.

8 Q. And what that's saying is that one of your
9 field people could reach out to you and then you
10 would facilitate the creation of that letter; right?

11 A. Yes.

12 Q. That was your role?

13 A. Yes. That was my role. For this patient
14 safety implications letter, that was my role, yes.

15 Q. If you go up to the slide to slide 3,
16 slide 3 of this slide says "How do we address
17 accounts using remanufactured I&A?"

18 Do you see that?

19 A. Yes.

20 Q. And then there are four boxes that run in
21 the second row here.

22 Do you see that?

23 A. Yes.

24 Q. First says "Internal Review." Then it says
25 "Educate Account." Then it says "Patient Safety

1 Implications Letter." And then it says "Terminate
2 Agreement."

3 Do you see that?

4 A. Yes.

5 Q. Now, this third part that says "Patient
6 Safety Implications Letter," that's the letter that
7 we just talked about that you would work with legal
8 to create and send to the customer; right?

9 A. Yes.

10 Q. Now, if we back up to the second part, it
11 says, "Field teams with affected customer accounts
12 are made aware by internal team via e-mail"; right?

13 And then it says, "Commercial team
14 coordinates efforts to educate the customer
15 account."

16 Do you see that?

17 A. Yes.

18 Q. Now, that part of the -- that part of the
19 process would -- is demonstrated by the last e-mail
20 that we just looked at where Mr. Davis reached out
21 to Ms. Harvey; right?

22 A. Yes.

23 Q. Now, was this a process that you created,
24 or was this something that existed before you got
25 there?

1 A. So, again, the process has changed over
2 time. I'm not sure when we had this process in
3 place, but this is the process that we created --
4 yeah, as a -- from all of the core team, the
5 internal teams on this.

6 Q. Internally, did you make the decision that
7 when you were confronted with a customer that was
8 repairing your instruments that you were to ignore
9 all of the reasons for doing so and to simply
10 reiterate that you believe that they were engaging
11 in behavior that was not safe and that if they
12 didn't stop you would terminate the agreement with
13 them?

14 MS. LENT: Objection.

15 THE WITNESS: Can you rephrase that?

16 BY MR. ADAMS:

17 Q. As part of the process, did Intuitive
18 deliberately decide to ignore any of the reasons why
19 customers were using the repaired devices and,
20 instead, continued to press your view that the
21 customer was engaging in unsafe practices, and that
22 if they didn't stop, you would terminate the
23 agreement?

24 MS. LENT: Objection.

25 THE WITNESS: Sorry. I still don't quite

1 understand what you're trying to ask.

2 BY MR. ADAMS:

3 Q. The process that you lay out here includes,
4 number one, learning about customers that are
5 repairing your instruments; right?

6 A. That are using instruments that are past
7 their validated lives, yes.

8 Q. And at this stage, you learned and you knew
9 that customers were doing that because they felt
10 that they could safely repair them; right?

11 A. I -- I don't know why they would choose to
12 use them. We just know that they were using them,
13 according to the tableau report.

14 Q. All right. Then, after you got this
15 report, you then spoke to the customers and learned
16 why they were doing it right?

17 A. Well, no. So, again, for me the next step
18 would be to engage the field teams on this. Right?
19 And we would say -- we would educate them on, hey,
20 here's what's happening at the account and here are
21 the risks involved.

22 Q. So you would talk to your field team, and
23 you would give them your talking points about all of
24 the risks that are involved in that activity; right?

25 A. For using, yes, instruments past their

1 validated lives.

2 Q. You would then have those field team people
3 communicate with the customer and share with them
4 your views about the risks associated with using
5 those refinished -- those repaired devices; right?

6 MS. LENT: Objection.

7 THE WITNESS: Can you repeat that?

8 BY MR. ADAMS:

9 Q. After you talked to your field team
10 individuals, you then had them go and talk to their
11 customer; right?

12 A. Yes, we have asked them to speak to their
13 affected customers.

14 Q. And in speaking to the customers, they were
15 told to provide them with either the FAQs or provide
16 them with your position that what they were doing
17 was not safe from a patient perspective; right?

18 MS. LENT: Objection.

19 THE WITNESS: Say that one more time.

20 BY MR. ADAMS:

21 Q. In talking to the customer, they were told
22 to share either the FAQ or in some way communicate
23 with them that they were engaging in activity that
24 you thought was unsafe; right?

25 MS. LENT: Objection.

1 THE WITNESS: I mean, the customer didn't
2 speak with me. Spoke to our field teams, but I
3 would have to look at previous e-mails on those
4 types of reasons, I guess.

5 BY MR. ADAMS:

6 Q. Well, what you do know, Mr. Inacay, is that
7 when you talked to your field team, you told them to
8 then go talk to the customer; right?

9 A. Yes.

10 Q. And as you wrote here, commercial team
11 coordinates efforts to educate the customer account;
12 right?

13 A. Yes.

14 Q. And part of that education is to educate
15 them on the implications of using remanufactured
16 instruments; right?

17 A. Yes.

18 Q. And those implications are the implications
19 that you would either have on your FAQ or -- you
20 would have on your FAQ so that they could -- they
21 could, either in writing or on-site on the phone,
22 communicate that information to the customer; right?

23 And by "they," I mean your field managers.

24 A. So the purpose of the Patient Safety
25 Implication letter, again, is, in general, to

1 provide this information so they can actually walk
2 the customer through all of these different things
3 and they can visually see everything. Right?

4 Q. Well, the Patient Safety Implication
5 letter, sir, based on your little flow chart here,
6 comes after -- that comes after you have identified
7 who is using these devices, you have spoken with --
8 you have spoken with your field team, and you have
9 then had your field team reach out to the customer
10 either on-site or on the phone; right?

11 A. Yes, and let me --

12 Q. Let me ask the question.

13 This third part -- this third part is
14 where -- this third part comes before you send out
15 the Patient Safety Implication letter; right?

16 A. Yes.

17 Q. Now, at what point, between number three
18 and number four, do you go back to the customer and
19 say, hey, you know what, I've heard what you said.
20 I've really considered it and, here, let me try to
21 explain to you -- or let me provide you with the
22 data that demonstrates why it is that what you're
23 doing is unsafe?

24 MS. LENT: Objection.

25 THE WITNESS: I don't know what you mean.

1 Like, are you asking where in this process would we
2 provide data to customers? Is that what you're
3 asking?

4 BY MR. ADAMS:

5 Q. Yeah. To respond to their request that
6 you've explained why it is that what they're doing
7 is unsafe.

8 A. So, again, the patient safety implications
9 letter was intended to be used to explain all of the
10 risks involved, in general all of the risks involved
11 with using these remanufactured instruments; right?
12 It would also -- it would have further discussions
13 on top -- so we wouldn't just deliver this patient
14 safety implications letter to them; right? We would
15 send it and it walk them through it. And to give --
16 to provide more clarity now that they have a
17 physical copy of this.

18 Q. Well --

19 A. If you're asking for when our field
20 engineers provide data, from my understanding or
21 from what I recall, I don't remember field engineers
22 providing data to customers on remanufactured
23 instruments.

24 MR. ADAMS: I'm going to stop
25 screen-sharing this, and I'm going to mark next

1 Exhibit No. 7.

2 (Marked for identification purposes,
3 Exhibit 7.)

4 MR. ADAMS: It's the one titled "Slide
5 Unauthorized Remanufacture."

6 I'll screen-share this.

7 BY MR. ADAMS:

8 Q. Mr. Inacay, this is another version of what
9 appears to be a similar slide deck. I want to focus
10 on one particular page of this deck. It's on
11 slide 4.

12 Have you ever seen this slide before, sir?

13 A. Yes.

14 Q. And tell me how -- when did you see it?
15 Were you part of creating it? How do you know about
16 this?

17 A. I was a part of creating this slide deck.

18 Q. Was this --

19 A. I don't recall --

20 Q. Go ahead. You can go ahead.

21 A. I don't recall specifically when we used
22 this.

23 Q. Was this before or after the deck that we
24 just looked at, Exhibit 6?

25 A. I don't know.

1 Q. All right. One of the differences between
2 the two slides and this is -- withdrawn.

3 You see that there's this first event that
4 says "Trend Analysis" there, and then it says
5 "Educate Account." It says "Customer Letter" and
6 then it says "Terminate Agreement."

7 Do you see that?

8 A. Yes, I see that.

9 Q. And the bullet points sort of match up with
10 what we talked about earlier, about the four-part
11 process that you used; right?

12 A. Yes.

13 Q. One difference here is that it assigns
14 these timelines this -- five business days, ten
15 business days, ten business days, five business
16 days.

17 Do you see that?

18 A. Yes.

19 Q. Why was that included in this deck?

20 A. I don't recall.

21 Q. What is it telling us?

22 MS. LENT: Objection.

23 BY MR. ADAMS:

24 Q. As you read this, what do you understand it
25 to be telling you?

1 A. As I read it now, it looks like these are
2 how many days we stay in each phase of the process,
3 it looks like.

4 Q. Who created this deck?

5 A. I don't recall. If I had to guess, I
6 probably put an outline to this and then it was
7 created in conjunction with all of the internal
8 teams.

9 Q. This deck -- right.

10 With respect to this timeline and the
11 amount of time that you spend in each phase, this
12 was information that you included in a deck because
13 this is the amount of time that you -- as a team you
14 agreed you would spend in each phase; right?

15 A. Again, I don't recall. But I would say, I
16 looked at this now, that seems like what it would
17 be, yeah.

18 Q. That's the process that you implemented at
19 Intuitive; right, with respect to this issue
20 timeline-wise?

21 A. Again, I didn't -- I wasn't the person that
22 implemented this process. It was a team effort;
23 right? So ...

24 Q. Right. As the process was actually
25 practiced at Intuitive with respect to this issue

1 the timeline that we have here for the time spent in
2 each of the phases was the timeline that you
3 actually implemented; right?

4 MS. LENT: Objection.

5 THE WITNESS: From what I recall -- sorry.
6 Again, this would be a guess, but I would think this
7 is the days that we abide to or we tried to work
8 within for each step of the process.

9 BY MR. ADAMS:

10 Q. I'm not really interested in your guess on
11 this one. I kind of want to know what your best
12 recollection is about what these words mean to me.

13 So taking a look at this slide, the amount
14 of days that was included for each phase was, to the
15 best of your recollection, the amount of time that
16 you, in fact, spent in each phase with respect to
17 the customers that you identified were using the --
18 either refurbished or repaired or reprogrammed
19 EndoWrists; right?

20 MS. LENT: Objection.

21 THE WITNESS: From the best of my
22 recollection, yes, this is the -- the amount time we
23 would like to spend within each phase of the
24 process.

25 MR. ADAMS: Okay. At this time, let me go

1 off the record. I may be done.

2 THE VIDEOGRAPHER: Off the record. The
3 time is 2:41.

4 (Recess taken from 2:41 to 2:46.)

5 THE VIDEOGRAPHER: Back on the record. The
6 time is 2:46.

7 MR. ADAMS: I have no further questions of
8 Mr. Inacay at this time.

9 MS. LENT: Thank you. I don't have any
10 questions.

11 THE VIDEOGRAPHER: Off the record, Counsel?

12 MR. ADAMS: Yep.

13 MS. LENT: Yes.

14 THE VIDEOGRAPHER: This concludes today's
15 deposition. We're off the record. The time is
16 2:46.

17 (Deposition concluded at 2:46 p.m. PDT.)

18 ---oOo---

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1 CERTIFICATE OF WITNESS

2
3
4
5 I, the undersigned, declare under penalty
6 of perjury that I have read the foregoing
7 transcript, and I have made any corrections,
8 additions or deletions that I was desirous of
9 making; that the foregoing is a true and correct
10 transcript of my testimony contained therein.

11
12 EXECUTED this _____ day of _____,
13 20____ at _____, _____.

14
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16 _____
17 ANTONIO (AJ) INACAY
18
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1 STENOGRAPHER'S CERTIFICATE

2 I, LORRIE L. MARCHANT, Certified Shorthand
3 Reporter, Certificate No. 10523, for the State of
4 California, hereby certify that ANTONIO (AJ) INACAY
5 was by me duly sworn/affirmed to testify to the
6 truth, the whole truth and nothing but the truth in
7 the within-entitled cause; that said deposition was
8 taken at the time and place herein named; that the
9 deposition is a true record of the witness's
10 testimony as reported to the best of my ability by
11 me, a duly certified shorthand reporter and a
12 disinterested person, and was thereafter transcribed
13 under my direction into typewriting by computer;
14 that request [] was [X] was not made to read and
15 correct said deposition.

16 I further certify that I am not interested
17 in the outcome of said action, nor connected with,
18 nor related to any of the parties in said action,
19 nor to their respective counsel.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 9th day of June, 2021.

22
23 _____
24 LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC
25 Certified Shorthand Reporter #10523

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 9 8/15/2019, subject: Assistance
 10 with Citizens Medical Center
 (Intuitive-00569289 -
 Intuitive-00569291)

11 Exhibit 2 e-mail correspondence, dated 72
 12 9/12/2019, subject: Unauthorized
 Instrument Reprogramming
 Presentation (Intuitive-00110246
 13 - Intuitive-00110247)

14 Exhibit 3 Intuitive document entitled 77
 15 "Unauthorized Reprogrammed
 Instrument FAQ"
 (Intuitive-00110250 -
 16 Intuitive-00110251)

17 Exhibit 4 e-mail correspondence, dated 79
 18 10/16/2019, subject: Evergreen
 Hospital (Intuitive-00372987 -
 19 Intuitive-00372992)

20 Exhibit 5 e-mail correspondence, dated 118
 21 9/3/2019, subject: Meeting
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 Surgical System
 (Intuitive-00048799 -
 22 Intuitive-00048802)

23 ---oOo---

24

25

1 INDEX OF EXHIBITS MARKED FOR IDENTIFICATION

2 EXHIBIT DESCRIPTION PAGE

3 Exhibit 6 Intuitive document entitled 152

4 "Unauthorized I&A
5 Remanufacturing"
(Intuitive-00478736 -
Intuitive-00478742)

6 Exhibit 7 Intuitive document entitled 162

7 "Unauthorized Remanufactured
8 Instruments Overview"
(Intuitive-00439333 -
Intuitive-00439355)

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1 NAME OF CASE: Rebotix Repair v. Intuitive Surgical

2 DATE OF DEPOSITION: 6/8/2021

3 NAME OF WITNESS: Antonio Inacay

4 Reason Codes:

5 1. To clarify the record.

2. To conform to the facts.

6 3. To correct transcription errors.

7 Page _____ Line _____ Reason _____

From _____ to _____

8

Page _____ Line _____ Reason _____

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23

24 ANTONIO (AJ) INACAY

25

Exhibit 3

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4 ---oOo---

5 REBOTIX REPAIR LLC, :

6 Plaintiff, :

7 vs. : No. 8:20-CV-02274

8 INTUITIVE SURGICAL, INC., :

9 Defendant. :
10 _____ :

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12
13 HIGHLY CONFIDENTIAL

14 REMOTE DEPOSITION OF GLENN VAVOSO

15 May 14, 2021

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22 Job No. 194104

23 Stenographically reported by:

24 LAURA AXELSEN, CSR NO. 6173

25 RMR, CCRR, CRR, CRC

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4 ---oOo---

5 REBOTIX REPAIR LLC, :

6 Plaintiff, :

7 vs. : No. 8:20-CV-02274

8 INTUITIVE SURGICAL, INC., :

9 Defendant. :

10 _____ :

11
12 BE IT REMEMBERED THAT, pursuant to Notice and

13 on Friday, May 14, 2021, 9:05 a.m., with all

14 participants being present via Zoom

15 videoconference before me, LAURA AXELSEN, a

16 Certified Shorthand Reporter, remotely appeared

17 GLENN VAVOSO,

18 called as a witness by the plaintiff.

19 ---oOo---

1 APPEARANCES

2

3 FOR THE PLAINTIFF:

4

5 DOVEL & LUNER

6 BY: ALEXANDER ERWIG, ESQ.

7 JULIEN ADAMS, ESQ.

8 201 Santa Monica Boulevard

9 Santa Monica, California 90401

10

11 FOR THE DEFENDANT:

12

13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM

14 BY: KAREN LENT, ESQ.

15 ALENA PERSZYK, ESQ.

16 One Manhattan West

17 New York, New York 10001

18

19 There being also present Thomas D'Anieri,

20 Naomi Caldwell, and Jacob Arvold, videographer.

21

22 ---oOo---

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25

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1 VIDEOGRAPHER: Good morning. My name is
2 Jacob Arvold. I'm a certified legal videographer in
3 association with TSG Reporting, Inc.

4 Due to the severity of COVID-19 and
5 following the practice of social distancing, I will
6 not be in the same room with the witness. Instead,
7 I will record this video deposition remotely. The
8 reporter, Laura Axelsen, also will not be in the
9 same room and will swear the witness remotely.

10 Do all parties stipulate to the validity of
11 this video recording and remote swearing and that it
12 will be admissible in the courtroom as if it had
13 been taken following Rule 30 of the Federal Rules of
14 Civil Procedures and the State's rules where this
15 case is pending?

16 MR. ERWIG: Plaintiff stipulates.

17 MS. LENT: Defendant stipulates.

18 VIDEOGRAPHER: Thank you. This is the
19 start of the Media 1 of the video deposition of
20 Glenn Vavoso in the matter of Rebotix Repair versus
21 Intuitive Surgical, Inc. in the United States
22 District Court Middle District of Florida, Tampa
23 Division, Case No. 8:20-CV-02274.

24 This deposition is being held remotely on
25 May 14th, 2021, at approximately 9:07 a.m. Will

1 counsel please introduce yourselves?

2 MR. ERWIG: On behalf of plaintiff,

3 Alexander Erwig of Dovel & Luner.

4 MS. LENT: Karen Lent from Skadden on

5 behalf of Intuitive and the witness.

6 VIDEOGRAPHER: Also present.

7 MS. PERSZYK: Hi, Alena Perszyk from

8 Skadden on behalf of defendants is also attending.

9 MR. ERWIG: I have with me a legal

10 assistant from my firm as well, Thomas D'Anieri.

11 VIDEOGRAPHER: Will the court reporter

12 please swear in the witness?

13 GLENN VAVOSO

14 having been duly sworn/affirmed

15 under penalty of perjury

16 testified as follows:

17 EXAMINATION BY MR. ERWIG

18 MR. ERWIG: Q. Good morning, Mr. Vavoso.

19 A. Good morning.

20 Q. Could you please state your full name for

21 the record?

22 A. Glenn Robert Vavoso.

23 Q. Where do you work?

24 A. Work at Intuitive Surgical.

25 Q. What is your position at Intuitive?

1 A. I'm the senior vice president general
2 manager for Asia and our indirect global markets.

3 Q. What are your responsibilities in that
4 position?

5 A. Broadly, to manage the commercial endeavors
6 in the -- in the geographies of Asia where we have
7 distribution partners around the globe.

8 Q. Can you explain to me a little bit more
9 what you mean by manage endeavors around the globe?

10 A. I -- we have teams in place that report in
11 to me that provide sales and marketing support into
12 those markets. Sales support could be clinical
13 support for hospitals that have da Vinci systems,
14 teams of people that work with hospitals as they're
15 evaluating the technology, and, you know, variety of
16 marketing roles.

17 Q. Do your responsibilities include working
18 with teams in the United States?

19 A. In -- in part. I've got -- some of my
20 responsibilities are associated with training our
21 commercial employees, which are generally sales and
22 marketing employees. And so a part of that
23 responsibility is to train the new employees that
24 would join our -- our team.

25 Q. How long have you worked in your position

1 as the senior V.P.?

2 A. For the last six years. A variety of roles
3 in that senior vice president role, uhm, over that
4 six years. But for the past three or four years,
5 associated with our Asian markets.

6 Q. So would that be since 2015?

7 A. 2015, yes.

8 Q. I want to get a little bit of a sense of
9 your familiarity with the da Vinci surgical robot.

10 Can you describe to me how your position relates to
11 the da Vinci surgical robot?

12 A. When you say relates, meaning?

13 Q. Well, how, if at all, is your position in
14 your -- withdrawn.

15 How -- how in your position do you interact
16 with the da Vinci surgical robot?

17 MS. LENT: Object to the form.

18 THE WITNESS: Can you repeat the question,
19 Alexander?

20 MR. ERWIG: Q. Sure. Let me rephrase it.
21 Do you have some familiarity with the da Vinci
22 surgical robot?

23 A. Yes.

24 Q. Can you describe what that familiarity is?

25 A. As I said, I've been with -- maybe I didn't

1 say this. I've been with the organization for 15
2 years, uhm -- variety of roles around the selling
3 and marketing of the da Vinci system.

4 Q. You mentioned you've been involved in the
5 selling and marketing of the da Vinci system. Can
6 you explain to me a little bit more what you mean by
7 that?

8 A. In a -- in a variety of roles over that 15
9 years. It is leading and managing teams, myself
10 interacting with hospital executives, surgeons, in
11 the sales and support of the da Vinci system.

12 Q. Are you involved in the marketing and sale
13 of the da Vinci system in the United States?

14 A. In previous roles, yes.

15 Q. What previous roles?

16 A. I've held roles as a clinical sales
17 manager, an area sales director, and ecology sales
18 director, a clinical sales director, an area vice
19 president, vice president sales operations.

20 Q. I'm going to screen share some notes that
21 I've taken of the testimony that we just had.
22 You've been with Intuitive as the senior V.P. for
23 Asia since 2015?

24 A. Yes.

25 Q. And overall you've been with Intuitive for

1 15 years; is that right?

2 A. Yes.

3 MR. ERWIG: Mark as Exhibit 1 handwritten

4 notes that I've taken.

5 (EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)

6 MS. LENT: Objection.

7 MR. ERWIG: Q. Stop the screen share.

8 Mr. Vavoso, have you been deposed before?

9 A. I have.

10 Q. How many times?

11 A. How many times with Intuitive? In my life?

12 Q. Well, let's start with Intuitive.

13 A. Probably three times, two or three times.

14 Q. You've been deposed in your personal

15 capacity or as a 30(b)(6) witness?

16 A. I don't -- I don't recall the prior

17 depositions of how -- how it was classified.

18 Q. How many times have you been deposed in

19 your life?

20 A. Maybe four or five.

21 Q. Do you understand that you're here today

22 testifying on behalf of Intuitive?

23 A. Yes.

24 Q. And that the answers that you give are

25 binding on Intuitive, the company?

1 A. Yes.

2 Q. So your understanding that you had a
3 responsibility -- withdrawn.

4 You understand that you had a
5 responsibility to conduct a good faith search for
6 all relevant information known or reasonably
7 available to Intuitive?

8 MS. LENT: Objection to the form. You can
9 answer, though.

10 THE WITNESS: Can you repeat the question,
11 please?

12 MR. ERWIG: Q. You understand that you
13 had a responsibility to conduct a good faith search
14 for all relevant information known or reasonably
15 available to Intuitive on the topics for which you
16 were designated?

17 A. Yes.

18 Q. Did you conduct that search?

19 A. Through our -- through our legal team.
20 With the assistance of the legal team.

21 (EXHIBIT 2 WAS MARKED FOR IDENTIFICATION.)

22 MR. ERWIG: Q. I'm going to screen share
23 our next exhibit. This will be 4/1/21, Rebotix's
24 Notice of 30(b)(6) Deposition. It appears in
25 Folder 1 in the private folder. Move it to the

1 submitted folder.

2 Mr. Vavoso, have you seen this document
3 before?

4 A. I -- can we -- can you move through it so I
5 can see the contents? Is that the last page? I
6 have not seen this specific document.

7 Q. Do you see --

8 MS. LENT: Alexander. I'm sorry,
9 Alexander. Is someone putting the marked exhibits
10 into the submitted folder? It's not there yet.

11 MR. ERWIG: I believe TSG should be
12 handling that.

13 MS. LENT: Okay. It's not critical for
14 that one, but I don't -- it's not being done. So I
15 just want to make sure that that starts to happen as
16 we proceed.

17 MR. ERWIG: Q. Mr. Vavoso, have you seen
18 this document before?

19 A. No.

20 Q. Do you see this is titled plaintiff
21 Rebotix's Notice of Deposition of Intuitive under
22 rule 30(b)(6)?

23 A. I see that.

24 Q. Do you understand that you're here today
25 testifying on behalf of Intuitive pursuant to this

1 Notice of Deposition?

2 A. Yes.

3 Q. Have you reviewed the topics on which

4 Intuitive has designated you to testify?

5 A. Yes.

6 Q. You understand that you are -- withdrawn.

7 You understand that you are designated to
8 testify on Topics 1 through 4, 7, 11, 14, 16 through
9 18, 25, 31, and 33. Is that right?

10 MS. LENT: Objection. I don't think he was
11 designated for 11, Alexander.

12 THE WITNESS: Can you repeat those sections
13 again?

14 MR. ERWIG: Q. Sure. Topics 1 through 4,
15 you see those topics in front of you?

16 A. Yes.

17 Q. Are you prepared to testify on behalf of
18 Intuitive on those topics?

19 A. Yes.

20 Q. Topic 7, you understand that you've been
21 designated to testify on behalf of Intuitive?

22 A. Yes.

23 Q. Are you fully prepared to testify on
24 Topic 7?

25 A. Yes.

1 Q. Is it your understanding that you were
2 designated on Topic 11?

3 MS. LENT: Objection.

4 THE WITNESS: No.

5 MR. ERWIG: Q. So you're not prepared to
6 testify on Topic 11 today?

7 MS. LENT: Objection. Mr. Vavoso was not
8 designated to testify on Topic 11.

9 THE WITNESS: No.

10 MR. ERWIG: Q. You understand that you've
11 been designated by Intuitive on Topic 14?

12 A. Yes.

13 Q. And you're fully to prepared to testify on
14 Topic 14?

15 A. Yes.

16 Q. You understand that you've been designated
17 by Intuitive to testify on Topics 16, 17, and 18?

18 A. Yes.

19 Q. And you're fully prepared to testify on
20 those topics?

21 A. Yes.

22 Q. You understand you've been designated by
23 Intuitive to testify on Topic 25?

24 A. Yes.

25 Q. And you're fully prepared to testify on

1 Topic 25?

2 A. Yes.

3 Q. You understand that you've been designated
4 by Intuitive for Topic 31?

5 A. Yes.

6 Q. You're fully prepared to testify on Topic
7 31 today?

8 A. Yes.

9 Q. You also understand that you've been
10 designated by Intuitive to testify on Topic 33?

11 A. Yes.

12 Q. Are you fully prepared to testify on Topic
13 33 today?

14 A. Yes.

15 Q. How did you gather information to testify
16 on these topics?

17 A. What do you mean by how? Like --

18 Q. What process did you use to gather
19 information to testify on behalf of Intuitive on
20 these topics?

21 A. With the assistance of the legal team, I
22 did a search of documents relative to those topics.

23 Q. How else did you prepare for the deposition
24 today?

25 A. Reviewed that documentation that was

1 collected.

2 Q. Did you do anything else?

3 A. No.

4 Q. Did you speak to anyone at Intuitive?

5 A. Legal team.

6 Q. Anyone outside of the legal team?

7 A. No.

8 Q. Do you feel confident that you've gathered

9 all relevant information such that you can

10 competently testify on the topics you've been

11 designated for today?

12 MS. LENT: Objection.

13 THE WITNESS: To the extent of the

14 documents that have been collected through that

15 search, yes.

16 MR. ERWIG: Q. Do the documents collected

17 in that search reflect all relevant information

18 known or reasonably available to Intuitive?

19 MS. LENT: Objection.

20 THE WITNESS: Yes.

21 MR. ERWIG: Q. And that's the case for

22 each of the topics on which you're prepared to

23 testify today; is that right?

24 A. Yes.

25 Q. And you feel confident that you're fully

1 prepared to testify on each of these topics on
2 behalf of Intuitive as a 30(b)(6) witness today?

3 MS. LENT: Objection; asked and answered.

4 THE WITNESS: To the best of my abilities,
5 yes.

6 MR. ERWIG: Q. Do you have any documents
7 in front of you that are not visible to the camera?

8 A. No.

9 Q. Mr. Vavoso, what is Intuitive?

10 A. Can you be more clear on that -- the
11 question what is Intuitive?

12 Q. Well, sure. I just want to get a sense
13 from you what -- what the company, Intuitive
14 Surgical -- what it is or what it does?

15 A. We are a medical device company that
16 designs, manufactures medical equipment for use in
17 surgical treatment and for diagnostics.

18 Q. One of the things Intuitive sells is the
19 da Vinci surgical robot; is that right?

20 A. The robot itself, yes.

21 Q. What is a da Vinci surgical robot?

22 A. It is the -- it is part of the system that
23 allows a surgeon to perform a minimally invasive
24 surgical procedure.

25 Q. The da Vinci robot is part of a system

1 that's used for minimally invasive soft tissue

2 robotic surgery; is that right?

3 A. Yes.

4 Q. What minimally invasive soft tissue

5 surgeries can the da Vinci robot be used for?

6 A. In the United States?

7 Q. Correct.

8 A. Applications include urologic procedures,

9 treatment of cancer and other benign conditions.

10 Can be used in gynecology surgical procedures.

11 Variety of general surgery procedures. Thoracic

12 surgery. Cardiac surgery. Can be used in a number

13 of applications. Those are the ones that come to

14 mind.

15 Q. And in each application it's used for a

16 minimally invasive surgery; is that right?

17 A. Yes.

18 Q. What is a minimally invasive surgery?

19 A. One where you're doing surgery through

20 small access ports where instrumentation can be

21 inserted through those ports as compared to what we

22 would describe as traditional open surgery where it

23 would be large incision. These are small incision

24 surgeries.

25 Q. What is a soft tissue surgery?

1 A. Really describes the system application to
2 organs, tissue within the body, fatty layers versus
3 a -- an application that would be for, say,
4 orthopedics, which is bone, which is not soft
5 tissue.

6 Q. So the da Vinci surgical robot can only be
7 used for minimally invasive soft tissue robotic
8 surgery; is that right?

9 A. That is -- that is the current application,
10 yes.

11 Q. And that's the application for which
12 Intuitive has FDA approval; is that right?

13 A. Yes.

14 Q. I'm going to stop screen sharing this
15 exhibit.

16 MS. LENT: Alexander, there are no exhibits
17 in the exhibit share folder. I'm not sure who on
18 the deposition you're expecting to move them in once
19 they're marked. But I don't see anyone from TPG
20 [sic] that would be playing that role. There's no
21 concierge on the call. So could you please --

22 MR. ERWIG: Let's go off the record and
23 figure it out.

24 MS. LENT: Okay.

25 VIDEOGRAPHER: Off the record. The time is

1 9:27.

2 (The deposition was in recess from 9:27 to
3 9:33.)

4 VIDEOGRAPHER: We're back on the record.

5 The time is 9:34.

6 MS. LENT: For the record, I wanted to
7 state that we did indicate in correspondence with
8 the plaintiffs that Mr. Vavoso would cover Topic 11,
9 but that was an oversight on our part. That Topic
10 will be covered by another witness at a later date.

11 MR. ERWIG: Thank you, Ms. Lent.

12 I'm going to screen share our next exhibit.
13 This will be from Folder 1. This is 12/6/19, Cesnik
14 to Domondon. Do you see this on the screen in front
15 of you, Mr. Vavoso?

16 (EXHIBIT 3 WAS MARKED FOR IDENTIFICATION.)

17 THE WITNESS: Yes.

18 MR. ERWIG: Q. Who is Larry Cesnik?

19 A. He's one of our employees that does market
20 research.

21 Q. Who is Philip Domondon or Domondon?

22 A. I do not know.

23 Q. Do both Mr. Cesnik and Mr. Domondon appear
24 to have Intuitive Surgical e-mail addresses?

25 A. Yes.

1 Q. Does this appear to be an e-mail from Larry
2 Cesnik to Philip Domondon?

3 A. It appears to be.

4 Q. And there's a --

5 MS. LENT: Alexander, I'm sorry to
6 interrupt. But that's not the document that was
7 loaded to the -- the portal.

8 MR. ERWIG: Maybe it will be the next one.

9 MS. LENT: Uhm, okay. Okay. It will be
10 the attachment?

11 MR. ERWIG: The next one will be the
12 attachment. That's right. Maybe the attachment
13 just uploaded.

14 MS. LENT: Yeah, it would be great if they
15 can up -- put in the folder everything that we're
16 using. I mean, the exhibit that's in the folder is
17 not exactly what you're putting on the screen.

18 MR. ERWIG: No problem. Sure. It was a
19 one time oversight.

20 MS. LENT: No, no, I just want to make sure
21 we get it cleared up because it could be a big
22 problem going forward if we don't fix that.

23 MR. ERWIG: Q. Sure. Now, Mr. Vavoso, on
24 the bottom right corner of this e-mail there's a
25 label Intuitive dash and some numbers. Do you see

1 that?

2 A. Yes.

3 Q. Do you have an understanding of what that
4 means.

5 A. No.

6 Q. Is it your understanding that Intuitive
7 produced this document to the plaintiff in this
8 litigation?

9 A. I -- I see you showing it as some sort of
10 document that was produced for this.

11 MR. ERWIG: I'm going to take this exhibit
12 down. That was Exhibit 3. Our next exhibit will be
13 Exhibit 4, that will be 12/6/19 Attach to Cesnik to
14 Domondon.

15 (EXHIBIT 4 WAS MARKED FOR IDENTIFICATION.)

16 MR. ERWIG: Q. I'll screen share. Can
17 you see this on the screen in front of you,
18 Mr. Vavoso?

19 A. Yes.

20 Q. I'll represent to you that this is the
21 attachment to that e-mail that we just looked at. I
22 want to -- well, withdrawn.

23 Does this appear to be a slide deck labeled
24 U.S. patient messaging study results?

25 A. The title states that.

1 Q. And there's a line on the first slide that
2 states Intuitive market intelligence group. Do you
3 see that?

4 A. I do see that.

5 Q. I want to turn to Slide 18 with you. Does
6 this appear to be a slide labeled appendix?

7 A. Slide says appendix.

8 Q. And there's an image here of a -- what
9 looks to me like a kind of a four armed robot. What
10 is that an image of?

11 A. That is one component of the da Vinci --
12 one of the da Vinci systems.

13 Q. When you say one component, is this the
14 component that actually performs the surgery on the
15 patient?

16 A. Well, it's the entire integrated system
17 that performs and that executes the surgery, if you
18 will, through the surgeon. But this would be what
19 we would call a patient side cart.

20 Q. Want to move to Slide 19 with you. See
21 this appears to be a picture of a surgeon, and
22 there's text on this slide that says, "Surgery can
23 be performed either as traditional open surgery or
24 as minimally invasive surgery."

25 Do you see that?

1 A. I do.

2 Q. Can you explain to the jury the difference
3 between traditional open surgery and minimally
4 invasive surgery?

5 A. Traditional open surgery would be where
6 the -- you have a -- usually a large incision.
7 Surgeon is at the patient side. Surgeon would have
8 their hands inside the body to perform that surgery,
9 either removing tissue or removing organs, as
10 compared to a minimally invasive procedure, where
11 the procedure is done through small port access
12 incisions. Surgeon would not have their hands
13 inside the patient.

14 Q. Now, the next slide, Slide 19, says that
15 the incisions for open surgery can range from three
16 to four inches to very large depending on the
17 procedure being performed.

18 Do you see that?

19 A. Yes.

20 Q. Can you give me some sort of a -- some sort
21 of a benchmark or a yardstick as to how -- how large
22 the large end of incisions would be for open
23 surgery?

24 MS. LENT: Object to the form.

25 THE WITNESS: Can you -- can you restate

1 the question, Alexander?

2 MR. ERWIG: Q. Sure. Well, standard
3 ruler has 12 inches. About how long are the
4 incisions for open surgery compared to, say, a
5 standard one-foot ruler?

6 MS. LENT: Object to the form.

7 THE WITNESS: You know, open surgery can
8 vary greatly on size of that incision depending on
9 the type of procedure that you're talking about.
10 It's really, uhm, procedure-specific.

11 MR. ERWIG: Q. Sure. The slide says that
12 there's a range, right, from three to four inches to
13 very large. I just want to get a sense with you of
14 what that very large incision looks like. What --
15 what is the largest incision that you're aware of
16 that can be made during open surgery?

17 MS. LENT: Object to the form.

18 THE WITNESS: Take a cardiac surgery as an
19 example, you could see an incision that runs from
20 the base of the neck all the way to just above the
21 belly button and chest is cracked. And that would
22 be a pretty large incision.

23 MR. ERWIG: Q. Would that be about a foot
24 or a little bit more, or about how big would that
25 be?

1 MS. LENT: Object to the form.

2 THE WITNESS: It can vary. Depends on the
3 size of the patient. Uhm, some patients it might
4 be, uhm, 18 inches. Other patients it might be
5 30 inches depending on the size of the patient.

6 MR. ERWIG: Q. So 30 inches, that might
7 be a little more than kind of two rulers stacked
8 together, right? A standard ruler would be
9 12 inches; two of those, 24. So it's a pretty big
10 incision, right, depending on the patient?

11 A. Yes.

12 MS. LENT: Object to the form.

13 MR. ERWIG: Q. Now, for -- withdrawn.

14 And that big incision, that can leave a
15 pretty sizable scar on the patient, right?

16 MS. LENT: Objection.

17 THE WITNESS: What do you mean by big scar?

18 MR. ERWIG: Q. Well, I mean if you have a
19 30-inch incision, when that heals you would have
20 potentially a 30-inch or a large scar on your chest
21 taking the cardiac surgery example, right?

22 MS. LENT: Objection.

23 THE WITNESS: Yes, possible.

24 MR. ERWIG: Q. Now, I want to turn to the
25 next slide with you. Says that minimally invasive

1 surgery involves one to five small incisions
2 typically less than an inch in length made to access
3 the inside of your body with a camera and other
4 instruments.

5 Do you see that?

6 A. Yes.

7 Q. Now, less than an inch in length, is
8 that -- can you give me some sort of a benchmark as
9 to how small those incisions would be? Is it the
10 very tip of your pinky? Is it a 50-cent piece?
11 About how big are those incisions?

12 MS. LENT: Objection.

13 THE WITNESS: It could be 10 millimeters.
14 It could be up to 3 millimeters -- or
15 30 millimeters.

16 MR. ERWIG: Q. What's the largest
17 incision that's made in minimally invasive surgery,
18 to your knowledge?

19 MS. LENT: Objection.

20 THE WITNESS: It could vary. In -- in --
21 some surgeons might describe a -- even a hand assist
22 surgery where they might be removing an organ and
23 they make an incision, that might be three inches to
24 remove that organ. But they would define that as
25 minimally invasive surgery.

1 MR. ERWIG: Q. The slide says that
2 typically the one to five small incisions made in
3 minimally invasive surgery, those are less than an
4 inch in length, right?

5 MS. LENT: Objection; asked and answered.

6 THE WITNESS: That's what it says on the
7 slide, yeah.

8 MR. ERWIG: Now, if a surgeon's removing an
9 organ, is the surgeon actually reaching their hand
10 inside the patient and taking the organ out, or are
11 they doing that with minimally invasive type of
12 equipment?

13 MS. LENT: Objection; vague.

14 THE WITNESS: It can depend on -- on the
15 procedure itself. Generally, they're not putting
16 their hand in the patient if it's classified as a
17 minimally invasive procedure.

18 MR. ERWIG: Q. Now, the next slide has
19 two segments, one a laparoscopy, and the other one
20 is robotic assisted surgery. You see that?

21 A. I see the picture, yes.

22 Q. And you see that on the left side of the
23 picture there's a -- an image with a caption
24 laparoscopy, right?

25 A. Yes.

1 Q. On the right side of this image there's
2 picture of a surgeon and the caption robotic
3 assisted surgery. You see that?

4 A. Yes.

5 Q. And, in fact, there's a line of text on
6 this slide that says, "There are two types of
7 minimally invasive surgery, laparoscopy and robotic
8 assisted surgery."

9 Do you see that?

10 A. Yes.

11 Q. What is laparoscopy?

12 A. Laparoscopy is considered to be, again,
13 port access, small incision. It would be considered
14 minimally invasive -- a minimally invasive
15 procedure. Surgeon in typical laparoscopy is using
16 handheld instrumentation, typically straight rigid
17 instruments inserted through a port access through a
18 body wall. And the surgeon has a monitor that she
19 could be looking at to do that procedure, and there
20 would be a video or endoscope inserted through
21 another port access that would give that camera view
22 on the monitor.

23 Q. About how many -- well, withdrawn.

24 In laparoscopy the surgeon manipulates
25 instruments directly with their hands; is that

1 right?

2 A. Yes.

3 Q. And the -- the instruments used in a
4 traditional laparoscopy, what -- what are those
5 instruments called?

6 MS. LENT: Objection.

7 THE WITNESS: Can you be more specific?

8 MR. ERWIG: Q. Sure. Let me back up.
9 Let me ask a better question. Can you describe for
10 me the instruments that are used in a traditional
11 laparoscopy?

12 MS. LENT: Objection.

13 THE WITNESS: Many different types of
14 instruments used. They could be graspers. They
15 could be needle drivers, could be cautery devices.
16 There's a variety of different cautery devices that
17 could be used. Just to name a few.

18 MR. ERWIG: Q. Now, I want to talk to you
19 about robotic assisted surgery. In robotic assisted
20 surgery from a da Vinci robot there's four arms on
21 the robot that can perform the surgery; is that
22 right?

23 A. When you say four arms performing the
24 surgery, are you referring to a particular robotic
25 system?

1 Q. Uhm, well, the da Vinci SI and the XI, for
2 example, those each have four arms to perform the
3 surgery; is that right?

4 A. They -- they have four arms, but those arms
5 function slightly different between da Vinci SI and
6 da Vinci XI.

7 Q. They're still four arms that are involved
8 in the surgery -- in a surgery with the da Vinci SI,
9 right?

10 A. There can be.

11 MS. LENT: Object to the form.

12 MR. ERWIG: Q. There can also be four
13 arms involved in a surgery with a da Vinci XI as
14 well, right?

15 A. It can be up to four arms. Yes.

16 Q. And does the surgeon directly manipulate
17 those arms with their hands, or how does that work?

18 MS. LENT: Objection.

19 THE WITNESS: At what -- at what point in
20 the procedure?

21 MR. ERWIG: Q. Well, when you're -- you
22 mentioned that in a traditional laparoscopy the
23 surgeon is inserting instruments directly into
24 the -- into the patient, right?

25 A. Yes.

1 Q. In the robotic assisted surgery, is the
2 surgeon sitting in a console manipulating the
3 robotic arms?

4 A. Procedure has a beginning and an end. And
5 in the beginning set up of that system, the surgeon
6 or an assistant would be inserting and setting up
7 the orientation of those arms and the instrument
8 within the body. Once that's done, the surgeon
9 would, for the remainder of the procedure, operate
10 from what we call a surgeon console and is
11 manipulating those remotely from that surgeon
12 console within the operating room.

13 Q. Can you describe for me what that surgeon
14 console looks like?

15 A. It has a left and right manipulator, which
16 allows the surgeon to put their hands on the
17 manipulator and fingers in essentially a sort of a
18 grasper or forcep type finger grips. And the system
19 has a viewer that the surgeon can put their head
20 into and then view the endoscopic view, which one of
21 those arms would be controlling that endoscope slash
22 camera view.

23 And on the -- the surgeon would be seated
24 at that console and on the floor are a set of pedals
25 that allow a variety of different movements and

1 manipulations of those arms on the robotic system
2 and the instruments themselves.

3 Q. During a traditional procedure, is the
4 surgeon standing or is the surgeon seated?

5 A. During a --

6 MS. LENT: Objection.

7 THE WITNESS: Tra- -- during a traditional
8 procedure, can you be more specific?

9 MR. ERWIG: Q. In a normal laparoscopy,
10 traditional laparoscopy, the surgeon's using the
11 traditional instruments. Is the surgeon standing or
12 is the surgeon seated when he's operating on the
13 patient?

14 MS. LENT: Objection.

15 THE WITNESS: Typically they would be
16 standing.

17 MR. ERWIG: Q. Then the da Vinci surgery,
18 the surgeon would be seated at a console; is that
19 right?

20 A. Yes.

21 Q. It's one of the advantages of that approach
22 that the da Vinci surgery reduces surgeon fatigue?

23 A. Some surgeon might describe that it reduces
24 fatigue.

25 Q. Intuitive itself markets the da Vinci as

1 reducing surgeon fatigue, right?

2 A. I think there's a number of publications
3 that have addressed physician fatigue and have
4 measured that. We certainly do discuss those.

5 Q. And about how long is a laparoscopy or a
6 robotic assisted surgery?

7 MS. LENT: Objection.

8 THE WITNESS: It can vary greatly. Again,
9 depending on the type of procedure, the patient
10 themselves, the state of disease. Might be as short
11 as 20 minutes. Some surgeries could be long as five
12 hours.

13 MR. ERWIG: Q. In a five-hour surgery, if
14 the surgeon has to stand for that whole time, that
15 can get pretty tiring, right?

16 MS. LENT: Objection.

17 THE WITNESS: You'd have to ask the surgeon
18 their fatigue level.

19 MR. ERWIG: Q. Well, it's standing for
20 five hours, that's certainly more fatiguing than
21 sitting down for five hours, right, just in terms of
22 strain on the body?

23 MS. LENT: Objection.

24 THE WITNESS: Can you repeat the question?

25 MR. ERWIG: Q. Sure. Standing for five

1 hours, that's certainly more fatiguing than sitting
2 down for five hours for that same time period,
3 right, in terms of physical strain on the body?

4 MS. LENT: Objection.

5 THE WITNESS: I think some -- some surgeons
6 would describe it as more fatiguing.

7 MR. ERWIG: Q. Well, how about you, sir?
8 How would you describe it?

9 MS. LENT: Objection.

10 THE WITNESS: I've never done surgery, so
11 I -- hard to say. I can answer if I were at my desk
12 standing or if I was at my desk sitting. I do both,
13 and often stand for five hours and sometimes sit for
14 five hours.

15 MR. ERWIG: Q. And sitting for five
16 hours, that's generally less fatiguing than standing
17 for five hours, right?

18 MS. LENT: Objection.

19 THE WITNESS: It depends on the person,
20 situation, what you're doing.

21 MR. ERWIG: Q. I'm going to scroll to the
22 next slide with you. This says, "In laparoscopy,
23 the surgeon uses instruments to perform the surgery,
24 including a thin lighted tube with a small video
25 camera at the end called a laparoscope to see inside

1 the abdomen."

2 Do you see that?

3 A. Yes.

4 Q. How does the surgeon view the image from
5 the camera at the end of the laparoscope?

6 A. The laparoscope is wired to a monitor that
7 would be in the operating room. And they're viewing
8 that monitor.

9 Q. So that would be like kind of looking at a
10 T.V. a little bit off to the side that's showing
11 sort of the camera picture of the laparoscope; is
12 that right?

13 A. Yes.

14 Q. Next slide says, "Special long rigid
15 instruments with tools at the end called straight
16 sticks used to perform the surgery."

17 Do you see that?

18 A. I see that.

19 Q. Does this appear to be a -- an instrument
20 that would be used for traditional laparoscopic
21 surgery?

22 A. It appears to be.

23 Q. This slide, Slide 25, says that the surgeon
24 and team view the procedure on a monitor usually in
25 2D similar to a normal television. Do you see that?

1 A. Yes.

2 Q. In A traditional laparoscopy the surgeon is
3 looking at kind of a 2D image of the surgery as it's
4 progressing, right?

5 A. Yes.

6 Q. Now, the next slide says that in robotic
7 assisted surgery the surgeon uses the da Vinci
8 surgical system. See that?

9 A. Yes.

10 Q. And the slide after that says that he or
11 she sits at a console during the procedure, views
12 anatomy in high definition 3D vision, and controls
13 the instruments. Do you see that?

14 A. Yes.

15 Q. Can you explain what is meant by views
16 anatomy in high definition 3D vision?

17 A. The high definition is considered to be a
18 1080 resolution signal and defined as high
19 definition, greater than the standard definition.

20 And the 3D vision comes from the viewer left and
21 right, and there are two different viewing channels
22 through that endoscope, a left channel and a right
23 channel. And those images are left and right
24 brought together in a stereoscopic view, which
25 allows the surgeon to see depth.

1 Q. Can the surgeon see depth in the same way
2 with the traditional 2D laparoscopic monitor?

3 A. No.

4 Q. That's unique to a surgery performed using
5 the da Vinci console, right?

6 MS. LENT: Objection.

7 THE WITNESS: No.

8 MR. ERWIG: Q. In what way -- withdrawn.
9 Why is the answer no?

10 A. It's not unique to da Vinci. There are
11 other 3D vision systems out there that are used in
12 laparoscopic surgery.

13 Q. Well, in traditional laparoscopic surgery
14 the image is 2D, right?

15 A. I think it depends -- depends on the time
16 period you're talking. You said 15 years ago what
17 was the vision, likely two dimensions. Today, there
18 are other options out there around vision that are
19 used in laparoscopy that provide three-dimensional
20 viewing on the monitor.

21 Q. Well, this slide deck's from
22 December 6th, 2019, right?

23 MS. LENT: Objection.

24 THE WITNESS: I didn't see the date on the
25 slide.

1 MR. ERWIG: Q. One of the advantages of a
2 da Vinci surgery relative to a traditional 2D
3 laparoscopy is that uses 3D vision and lets the
4 surgeon see depth rather than just a flat monitor
5 screen, right?

6 MS. LENT: Objection.

7 THE WITNESS: As compared to 2D, yes.

8 MR. ERWIG: Q. Scroll to the next slide
9 which says, "The instruments bend and rotate further
10 than a human hand."

11 Do you see that?

12 A. I do.

13 Q. Now, the instruments in a traditional
14 laparoscopy, those are those straight stick
15 instruments that we looked at a little bit earlier,
16 right?

17 A. Yes.

18 Q. And the surgeon manipulates those from the
19 outside of the body and can turn them or move them
20 forward and backward, right?

21 A. And grasp or not grasp, yes.

22 Q. One of the advantages of the da Vinci
23 system is that the instruments themselves can rotate
24 and bend more than the human hand outside of a human
25 body can; is that right?

1 A. It -- it -- again, moment in time. There
2 are now laparoscopic instruments that have bending
3 motion to them. And so compared to a straight
4 stick, which is what -- a rigid instrument that you
5 showed on the prior slides, that would be an
6 advantage. But there are laparoscopic instruments
7 now that can bend and be manipulated in a -- in a
8 bending fashion by the surgeon at the patient side.

9 Q. Well, they certainly don't have the same
10 range of motion that the instrument used by the
11 da Vinci XI, for example, that those instruments
12 would, right?

13 MS. LENT: Objection.

14 THE WITNESS: I don't know.

15 MR. ERWIG: Q. Intuitive aware of any
16 instruments that have the same range of motion as
17 the EndoWrists on the da Vinci XI?

18 MS. LENT: Objection.

19 THE WITNESS: I don't know the range of
20 motion of those other instruments, but the general
21 motion that you had described now exists.

22 MR. ERWIG: Q. Now, the next slide says
23 that the instruments are attached to a patient side
24 cart and mimic every hand movement made by the
25 surgeon at the console. Do you see that?

1 A. I do.

2 Q. So when the surgeon is sitting at the
3 console, can you explain for me how the surgeon's
4 movements translate into the robotic arms of the
5 da Vinci system?

6 A. You have a -- for the full integrated
7 system, the patient cart is connected to the surgeon
8 cart -- or the surgeon console where the surgeon is
9 seated. There's also a vision cart, also one of the
10 components of the system. And those are all
11 connected via fiberoptics.

12 And so the motion of the surgeon's hands at
13 the console as she moves her wrists or moves her
14 arms, that is replicated through lots of algorithms
15 that control the instrument insertion, rotation,
16 flex of that instrument within the body.

17 Q. And in contrast to a traditional surgery,
18 where the surgeon's actually physically manipulating
19 each instrument, in the case of a da Vinci surgery,
20 the surgeon's doing that remotely from a console,
21 right?

22 A. When you say traditional surgery, what do
23 you mean?

24 Q. A tradition laparoscopy.

25 A. Traditional laparoscopy with a straight

1 stick or a flexible laparoscopy?

2 Q. Well, either one, right?

3 A. I'm sorry. Can you repeat the question?

4 Q. Sure. In a traditional laparoscopy, the
5 surgeon's directly manipulating the instruments,
6 right?

7 A. Yes, at the patient side.

8 Q. And the -- in the da Vinci robotic assisted
9 surgery, the surgeon is manipulating those
10 instruments from afar, from a console, right?

11 A. Yes.

12 Q. Stop screen sharing this exhibit. Screen
13 share with you some notes that I've taken during our
14 discussion. See on the left-hand side there's a
15 column titled laparoscopy. You see that?

16 A. I see that.

17 Q. On the right-hand side there's a column
18 labeled robotic assisted surgery. You see that?

19 A. Yes.

20 Q. And the da Vinci -- for the da Vinci XI and
21 SI, there's four robotic arms involved in that
22 surgery, right?

23 MS. LENT: Objection; misstates the
24 testimony.

25 THE WITNESS: It doesn't have to be four

1 arms. It could be up to four arms.

2 MR. ERWIG: Q. Well, the da Vinci robot
3 certainly has four arms that are available during a
4 surgery, right?

5 A. Capable of being available. Up to four
6 arms.

7 Q. And the surgeon only has two arms available
8 at any time, right, in a traditional laparoscopy?

9 A. Alongside their usually assistant, yes.

10 Q. But the surgeon himself can't -- you know,
11 can't grow more arms to be involved in the surgery,
12 right?

13 A. No, but they can add more assistants to the
14 procedure.

15 Q. Now, in a traditional laparoscopy, the
16 surgeon manipulates the instruments with their hands
17 directly and they're usually standing, right?

18 A. Yes.

19 Q. In a robotic assisted surgery with a
20 da Vinci, the surgeon, for large part of the
21 procedure, operates the da Vinci robot from a
22 surgeon console and is seated during that process,
23 right?

24 A. Yes.

25 Q. Now, in a traditional laparoscopy, there's

1 a camera that's on the actual ends of the
2 laparoscopic instruments, right?

3 A. It depends on what kind of camera and
4 endoscope we're talking about.

5 Q. Well, in a traditional laparoscopic
6 surgery, there would be a camera on the end of an
7 endoscope, and it would transfer a signal to a
8 monitor, right?

9 MS. LENT: Objection.

10 THE WITNESS: It would transfer it to a 3D
11 or 2D monitor, yes.

12 MR. ERWIG: Q. Well, typically it would
13 transfer to a 2D monitor, right?

14 MS. LENT: Objection.

15 THE WITNESS: Can you define typically?

16 MR. ERWIG: Q. Well, sure. In the -- in
17 traditional laparoscopic surgery, the image that's
18 appearing on a normal kind of T.V. screen monitor,
19 that would be a 2D image, right?

20 MS. LENT: Objection.

21 THE WITNESS: It could be either a 3D or 2D
22 vision system.

23 MR. ERWIG: Q. Well, how can you display
24 a 3D image on a -- just a normal monitor, normal
25 T.V. screen?

1 A. The technology exists to do that or the
2 surgeon can wear 3D glasses or wear a headset at the
3 patient side.

4 Q. Typically when the endoscope -- when it's
5 the actual endoscope that's transmitting a signal to
6 another monitor, that signal would be 2D, right?

7 MS. LENT: Objection.

8 THE WITNESS: It depends, as we discussed.
9 It -- it could be -- it could be a 3D signal, or it
10 can be a 2D signal.

11 MR. ERWIG: Q. Are you aware of the
12 general split in the market as to 2D and 3D signals
13 sent from traditional endoscopes?

14 A. I'm aware.

15 MS. LENT: Objection.

16 MR. ERWIG: Q. Can you give me a general
17 estimate of what percentage of traditional
18 laparoscopies are performed with the 2D vision
19 endoscope camera to monitor system?

20 A. I would be guessing.

21 Q. Do you have a best guess?

22 A. No.

23 Q. Now, the robotic assisted surgery from the
24 da Vinci SI and XI, the surgeon always sees high
25 definition 3D vision at the console, right?

1 A. Typically, yes.

2 Q. Another difference between traditional
3 laparoscopy and the robotic assisted surgery is that
4 typically the normal laparoscopy, that's done with
5 straight stick instruments, right?

6 MS. LENT: Object to the form. Misstates
7 the testimony.

8 THE WITNESS: In laparoscopy, there are now
9 many choices of whether it could be straight sticks.
10 It could be instruments that have flexible wrists.

11 MR. ERWIG: Q. Now, one advantage of the
12 da Vinci system is that the actual instruments that
13 are used for the surgery, those can bend and rotate
14 further than the normal human hand can, right?

15 A. Yes.

16 MR. ERWIG: I'm going to mark as -- I
17 believe this is Exhibit 5, handwritten notes.

18 (EXHIBIT 5 WAS MARKED FOR IDENTIFICATION.)

19 MS. LENT: While you're taking that down, I
20 object, for the record, to Exhibit 4 as not
21 reflecting the witness's testimony.

22 MR. ERWIG: I believe Exhibit 4 was the
23 attachment to the PowerPoint. So if you --

24 MS. LENT: Oh --

25 MR. ERWIG: Exhibit 5?

1 MS. LENT: I will say I object to Exhibit 5
2 because it doesn't accurately reflect the witness's
3 testimony, and I don't have these exhibits on the
4 exhibit share. So I continue to object that you're
5 not putting all the exhibits in the exhibit share
6 folder the way we are supposed to.

7 MR. ERWIG: Q. I'll get those scanned in
8 at the next break. Stop screen sharing.

9 Now, Mr. Vavoso, for the actual surgical
10 robot, I understand there's instruments called
11 EndoWrists; is that right?

12 A. Yes.

13 Q. What is an EndoWrist?

14 A. EndoWrist would be a brand name, but what
15 that -- those instruments -- what's described are
16 instruments that are part of a da Vinci system. Can
17 be attached to the patient's cart and can have a
18 variety of motion. Some instruments bend. Some are
19 straight stick. But those instruments are
20 controlled by the surgeon at the surgeon console.

21 Q. Those EndoWrists, they have a number of
22 different attachments, right? There's a forceps,
23 for example, right?

24 A. Forceps would be one of the types of
25 instruments.

1 Q. There can be some -- some Potts scissors,
2 right?

3 A. Potts scissors would be another.

4 Q. Those would all be different types of
5 EndoWrists that attach to the Intuitive surgical
6 robot; is that right?

7 A. Yes.

8 Q. And those EndoWrists are sold separately
9 from the da Vinci surgical robot; is that right?

10 A. As separately, meaning -- can you define
11 that?

12 Q. Well, sure. If a customer wants to operate
13 a da Vinci surgical system, that customer first has
14 to purchase the da Vinci surgical robot, right?

15 MS. LENT: Objection.

16 THE WITNESS: The -- the customer does
17 purchase the system, uhm, and then the agreement
18 part of that purchase includes instruments or
19 accessories.

20 MR. ERWIG: Q. The customer has to
21 purchase instruments and accessories separately from
22 the actual da Vinci robot, right?

23 MS. LENT: Objection.

24 THE WITNESS: Over time, after they've made
25 the initial da Vinci purchase, they're -- ongoing

1 they're purchasing instruments to be used with the
2 system.

3 MR. ERWIG: Q. So the purchase of those
4 ongoing instruments, you're not buying an additional
5 robot each time, right? You're just buying new
6 EndoWrists for the robot that you already own; is
7 that right?

8 A. You're not buying a robot each time,
9 correct.

10 Q. Does Intuitive make profits from the sale
11 of its da Vinci surgical robots?

12 A. Yes.

13 Q. About how much is Intuitive's profit for
14 da Vinci robots sold?

15 A. It can vary depending on what is purchased,
16 what kind of system is purchased. Variety of
17 factors go into what would be -- what would be the
18 profit on a sale.

19 Q. Well, let's -- let's break it down. For
20 the da Vinci SI, what's the general profit on a --
21 the sale of a da Vinci SI system to a hospital, for
22 example?

23 A. Profit as measured by what measure?

24 Q. Well, the cost of goods to make the
25 da Vinci robot and the sale price of the da Vinci

1 robot to the hospital. Let's use that measure.

2 MS. LENT: Objection.

3 THE WITNESS: Yeah, I -- so, you know, as
4 you describe cost of goods sold versus the price,
5 again, it can vary because hospitals buy system.
6 Those prices are negotiated. The profit can vary
7 customer to customer.

8 MR. ERWIG: Q. But Intuitive makes a
9 profit on all of their sales, right?

10 A. They do.

11 Q. And Intuitive also makes a profit on all of
12 the sales of the XI da Vinci robot, right?

13 A. Yes.

14 Q. Intuitive also makes profits from the sale
15 of its EndoWrists; is that right?

16 A. Yes.

17 Q. About how much profit does Intuitive make
18 from the sale of a single EndoWrist?

19 A. Again, sort of depends on the definition of
20 profit versus operating income. It can -- it can
21 vary by instrument or instrument type.

22 Q. There's some different pricing for
23 different types of EndoWrists; is that right?

24 A. There's -- say that question again?

25 Q. Well, so there's a number of different

1 types of EndoWrists that Intuitive sells, right?

2 A. Yes.

3 Q. Some are of the graspers that we talked
4 about earlier, right?

5 A. Yes.

6 Q. Or another one would be the Potts scissors,
7 right?

8 A. Potts scissors could be one.

9 Q. Those different types of instruments, they
10 might have different prices that Intuitive charges,
11 right?

12 A. They would.

13 Q. Now, for each instrument that Intuitive
14 sells, Intuitive makes a profit on the sale of that
15 instrument, right?

16 A. Yes.

17 Q. Now, traditional laparoscopic instruments,
18 those can't be used with -- withdrawn.

19 Traditional laparoscopic instruments can't
20 be used with the da Vinci surgical system, right?

21 A. Not -- they can't be used as attached to
22 the da Vinci system. They may, in many procedures,
23 be used alongside of the da Vinci system.

24 Q. Well, let me back up and just make sure
25 that we have the EndoWrists and the actual system

1 clear. Now, how does the EndoWrist attach to the
2 da Vinci surgical system?

3 A. The -- there's a patient side cart that has
4 a number of arms. There's a carriage mechanism on
5 the -- on the arm of that patient side cart, and the
6 instrument is put into that carriage and engages
7 with the patient side cart.

8 Q. So kind of, in simple terms, you would take
9 an instrument and you would attach it to each
10 individual arm of the da Vinci so you could have,
11 for example, four different types of EndoWrists on
12 each of the four different arms, right?

13 A. You would have the instruments attached.
14 Though one of those arms is holding the camera, not
15 an instrument.

16 Q. I understand. So you would have one arm
17 with a camera that's providing that 3D vision to the
18 surgeon, right?

19 A. Yes.

20 Q. And then the other three arms, those can be
21 outfitted with different types of EndoWrists, right?

22 A. Up to three arms could be outfitted with
23 those EndoWrist instruments, yes.

24 Q. You could have different EndoWrists on each
25 one of those arms, right?

1 A. Yes.

2 Q. And if you want to swap out an EndoWrist
3 how does -- how does that process work?

4 A. There is an assistant at the patient side
5 that would do the instrument exchange.

6 Q. And when you're swapping out an EndoWrist,
7 you would swap that out for another EndoWrist,
8 right?

9 A. Yes.

10 Q. You wouldn't, for example, take a
11 traditional laparoscopic straight stick instrument
12 and swap it out with the EndoWrist, right?

13 MS. LENT: Objection.

14 THE WITNESS: Yeah, you would not attach
15 the laparoscopic instrument to the patient's side
16 cart.

17 MR. ERWIG: Q. And, in fact, you wouldn't
18 attach anything other than an EndoWrist to the
19 patient side cart besides the camera, right?

20 A. Uhm, there are other third-party devices
21 that could get attached. I just want to be clear on
22 the question.

23 Q. Well, from Intuitive's perspective only --
24 only approved thing to attach to a -- to a da Vinci
25 robot would be an EndoWrist that Intuitive has sold

1 to the customer, right?

2 MS. LENT: Objection.

3 THE WITNESS: Again, I want to be specific
4 on the question. Uhm, on the instrument attaching
5 to the arm of the system, that would be an
6 EndoWrist. But I want to be clear that there are
7 other devices that attach to the instrument that is
8 now attached to the patient side cart.

9 MR. ERWIG: Q. Well, the four arms that
10 are on the patient side cart, let's just focus in on
11 those. Those are the four arms we talked about.
12 One of those arms holding the camera for the
13 surgeon, right?

14 A. Yes.

15 Q. And then there's three other arms that are
16 available to have EndoWrists attached to them,
17 right?

18 A. Yes.

19 Q. Now, is there any other brand of attachment
20 that can be attached to those arms other than
21 EndoWrists?

22 A. Some of those instruments have a -- other
23 company's brand associated with it.

24 Q. What do you mean by that?

25 A. For example, we have a harmonic instrument

1 that is -- part of that instrument is designed by
2 another company and, in fact, the name harmonic is
3 not a da Vinci branded item. It's another company's
4 branded item, but it is designed into that harmonic
5 EndoWrist -- it's not an EndoWrist -- considered to
6 be an EndoWrist because it does not flex. That's
7 the rigid instrument that is attached to the
8 da Vinci system.

9 Q. And that would be one of the EndoWrists
10 that Intuitive would sell to its customers, right?

11 MS. LENT: Objection.

12 THE WITNESS: That particular one is not
13 called an EndoWrist because it doesn't have a
14 flexible wrist. But, yes, we would take that
15 instrument, that harmonic instrument, and we would
16 sell that to the customer.

17 MR. ERWIG: Q. Where can hospitals that
18 have a da Vinci surgical robot -- let's just focus
19 in on the SI and the XI, where can they buy
20 EndoWrists from?

21 A. They can buy those instruments from
22 Intuitive Surgical.

23 Q. Anywhere else?

24 A. In the United States, right?

25 Q. Correct.

1 A. No, Intuitive Surgical.

2 Q. Now, there's separate demand for EndoWrists
3 and for da Vinci surgical robots, right?

4 MS. LENT: Objection.

5 THE WITNESS: Can you describe separate
6 demand?

7 MR. ERWIG: Q. Sure. Let me ask a better
8 question. When the hospital is looking at buying a
9 da Vinci surgical robot, they're not deciding
10 between, let's say, a da Vinci surgical robot and
11 buying an EndoWrist, right?

12 A. No.

13 MS. LENT: Objection.

14 THE WITNESS: They're -- they're buying
15 into the full da Vinci system.

16 MR. ERWIG: Q. So the first step for the
17 customer is they'll buy a da Vinci surgical robot,
18 like the SI or XI, right?

19 MS. LENT: Objection; asked and answered.
20 Misstates his testimony.

21 THE WITNESS: No.

22 MR. ERWIG: Q. Are there any competitors
23 that manufacture EndoWrists that can be used with
24 Intuitive's da Vinci robots?

25 A. I'll go back, you know, there are --

1 there's an example of -- there are components that
2 are manufactured and then integrated into a da Vinci
3 instrument sold through Intuitive to the end user.

4 Q. Is there any other company that sells --
5 withdrawn.

6 Is there, to Intuitive's knowledge, any
7 company other than Intuitive that sells devices that
8 can be used with the da Vinci XI or SI?

9 A. Not directly sold to an end user.

10 Q. In fact, the only entity that sells
11 EndoWrists to hospitals is Intuitive Surgical,
12 right?

13 MS. LENT: Objection.

14 THE WITNESS: Yes.

15 MR. ERWIG: And just under an hour, but I
16 think it's a good time for a break. So let's go off
17 the record.

18 VIDEOGRAPHER: Off record. The time is
19 10:30.

20 (The deposition was in recess from 10:29 to
21 10:40.)

22 VIDEOGRAPHER: This is the beginning of
23 Media No. 2 in the deposition of Glenn Vavoso. We
24 are back on the record. The time is 10:41.

25 MR. ERWIG: I'm going to screen share the

1 next exhibit. This will be Exhibit 6. In Folder 1,
2 it's titled Value and Barriers.

3 (EXHIBIT 6 WAS MARKED FOR IDENTIFICATION.)

4 MR. ERWIG: Q. Can you see this on the
5 screen in front of you, Mr. Vavoso?

6 A. I do.

7 Q. Does this appear to be an Intuitive
8 Surgical PowerPoint presentation entitled value and
9 barriers?

10 A. It does.

11 Q. I want to talk to you about the second
12 slide, which reads, "Current procedure penetration
13 in U.S."

14 Do you see that?

15 A. Are you able to zoom in a little on it?

16 Q. Just about to ask you. Yes, I can make
17 that bigger for you. How's that?

18 A. Thank you. Yes. And what's the date of
19 this document?

20 Q. Uhm, it's 5/18. So -- so my guess that
21 would be -- I'm not sure if that's May 18th or --
22 but my -- my question is, in -- do you see there's a
23 list of procedures here, including a colon
24 resection, a lobectomy, a hysterectomy, and so
25 forth?

1 A. I see that.

2 Q. Are there any procedures out of the ones --
3 withdrawn.

4 Are there any procedures other than the
5 ones listed on this slide that the da Vinci SI or XI
6 can perform?

7 A. Yes.

8 Q. What are those procedures?

9 A. I think there's a number of -- the ones
10 that I can recall, uhm, beyond this list would be
11 mitral valve repair, uhm, cholecystectomy.

12 Q. Now, there's a slide here later on that's
13 labeled Slide 3 that says, "Procedures where we have
14 proven interest."

15 Do you see that?

16 A. I see the slide. It's hard to read.

17 Q. Sure. I can zoom in again. Do these
18 appear to be all the procedures that Intuitive is
19 aware of that the da Vinci SI and XI can be used
20 for?

21 MS. LENT: Going to object to the form.

22 THE REPORTER: (Clarification.)

23 THE WITNESS: There are several other
24 procedures that are not on here that da Vinci can
25 perform.

1 MR. ERWIG: Q. Has the FDA authorized the
2 da Vinci SI or the da Vinci XI to perform any
3 procedure other than minimally invasive soft tissue
4 surgery?

5 A. Yeah, that, again, that's a -- it's a --
6 soft tissue surgery is a very broad -- the FDA will
7 approve specific indications even under that soft
8 tissue surgery broad category.

9 Q. As Intuitive's 30(b)(6) witness, are you
10 able to identify the surgeries that Intuitive's
11 da Vinci SI has FDA approval for?

12 MS. LENT: Objection; not --

13 THE WITNESS: There are --

14 MS. LENT: -- one of the topics.

15 THE WITNESS: Can you repeat the question,
16 please?

17 MR. ERWIG: Q. Well, let me -- let me ask
18 it slightly differently. The da Vinci SI and XI has
19 FDA approval to perform set of minimally invasive
20 soft tissue robotic surgeries, right?

21 A. Yes.

22 Q. Stop screen sharing this exhibit. What
23 other -- withdrawn. And the da Vinci robot has some
24 differences from a traditional -- withdrawn.

25 The da Vinci SI and XI have some

1 differences from traditional laparoscopic surgery,
2 right?

3 MS. LENT: Objection; vague.

4 THE REPORTER: (Clarification.)

5 THE WITNESS: Can you -- can you be
6 specific on the differences?

7 MR. ERWIG: Q. Well, first I want to --
8 at a general level, there's differences between
9 the -- a traditional laparoscopic surgery and the
10 da Vinci -- and a laparoscopy performed by a
11 da Vinci robot, right? Well -- withdrawn.

12 There's differences in surgery that uses a
13 da Vinci robot and a minimally invasive soft tissue
14 surgery that does not use a da Vinci robot, right?

15 MS. LENT: Objection; vague.

16 THE WITNESS: Can you restate the question,
17 please?

18 MR. ERWIG: Q. Well, we talked earlier,
19 sir, about traditional laparoscopy, right?

20 A. Yes.

21 Q. And we also discussed the way in which
22 surgery with a da Vinci robot is performed, right?

23 A. Yes.

24 Q. Specifically the da Vinci SI and XI, right?

25 A. Yes.

1 Q. Now, there's some differences between the
2 way that surgery is performed in the traditional
3 manner and the way that it's performed with a da
4 Vinci SI and XI, right?

5 MS. LENT: Objection.

6 THE WITNESS: There are differences.

7 MR. ERWIG: I'm going to screen share our
8 next exhibit. This will be from Folder 2. This
9 will be 8/3/17 Stoffel to Bischoff and Vavoso. Mark
10 this as Plaintiff's Exhibit 7.

11 (EXHIBIT 7 WAS MARKED FOR IDENTIFICATION.)

12 MR. ERWIG: Q. You see this on the screen
13 in front of you?

14 A. Yes.

15 Q. Do you recognize this?

16 A. It's -- it's been some time. Sort of the
17 context of it, I recognize it. Can't say I recall
18 the specific e-mail directly, but the context.

19 Q. Sure. Does this appear to be an e-mail
20 from David Stoffel at Intuitive Surgical and Paige
21 Bischoff and copying yourself and Gary Guthart and
22 others from Intuitive?

23 A. Yes.

24 Q. And this e-mail was sent on
25 August 3rd, 2017. You see that?

1 A. Yes.

2 Q. And there's an attachment to this that's
3 labeled preparation for industry panel discussion
4 V3.docX.

5 Do you see that?

6 A. Yes.

7 Q. Did you receive this e-mail and the
8 attachment to this e-mail?

9 A. Likely did, yes.

10 MR. ERWIG: I'm going to stop screen
11 sharing this exhibit. Our next exhibit will be
12 Exhibit 8. That will be the attachment to that
13 e-mail. It's labeled Attach to Stoffel to Bischoff
14 and Vavoso. Screen share this with you.

15 (EXHIBIT 8 WAS MARKED FOR IDENTIFICATION.)

16 MR. ERWIG: Q. Do you recognize this
17 document?

18 A. Yes.

19 Q. How do you recognize it?

20 A. I -- this was a -- I recognize that this
21 was a preparation document for a panel discussion at
22 a society surgeon led meeting.

23 Q. And you're listed under the Intuitive
24 Surgical -- well, withdrawn.

25 Your name's listed next to Intuitive

1 Surgical, can you explain what that means?

2 A. This was a -- this was for a meeting hosted
3 by a surgeon and a society of -- I believe it was
4 Bariatrics conference in Texas, and I was due to be
5 a part of an industry panel. That surgeon had
6 invited a number of companies to participate at, and
7 those are the list of the companies and the -- and
8 those that were to present in.

9 Q. What was the purpose of that industry
10 panel?

11 A. It was going to be facilitated by the
12 physician just to get dialogue, uhm, about robotic
13 surgery.

14 Q. And when you were preparing for that panel,
15 can you describe to me how -- what your preparation
16 involved?

17 A. It was one or two meetings of, you know,
18 what was the intent of that panel discussion. This
19 document was a prep document for that, so going
20 through the various questions and what questions
21 could be asked. It was a prep to think about what
22 might the dialogue be, and if that were the
23 dialogue, then how might -- might I answer that if I
24 were on the panel.

25 Q. And you wanted to be sure that you prepared

1 to give answers to specific questions so that you
2 could represent sort of Intuitive's position on
3 things?

4 MS. LENT: Objection.

5 THE WITNESS: Yes.

6 MR. ERWIG: Q. Scroll down to one of the
7 questions. You see question 12 is "Will Intuitive
8 ever go into laparoscopic surgery?"

9 A. I see that.

10 Q. And the answer that's on this document is
11 "We do not see ourselves in competition with
12 laparoscopy. It's about the right tool for the
13 right job."

14 Do you see that?

15 A. I see that.

16 Q. Was it your understanding, as of this time,
17 that this reflected an accurate statement?

18 A. I'm looking at the document. It is a very
19 draft document that I'm -- I don't remember who
20 actually put the words down. In fact, it looks like
21 it's being edited there just within this document.

22 Uhm, so I, you know -- I don't -- I don't recall
23 that as a --

24 Q. It looks like there's some edits in the
25 margins on the right-hand side, right?

1 A. Yes. Hard to read, but I see the edits.

2 Q. I can zoom in on them for you. There's one
3 comment about that very sentence that we do not see
4 ourselves in competition with laparoscopy, right, by
5 PB6. Do you see that?

6 A. I do.

7 Q. That Paige Bischoff?

8 A. I -- unless there's another PB on the
9 e-mail, I would assume it to be.

10 Q. And Paige writes, "Do we want to say this
11 first sentence or just go with the second," right?

12 A. That's what it says.

13 MR. ERWIG: And you mentioned that this was
14 still a work in progress. So let's go ahead and
15 stop screen sharing this and take a look at the
16 final. Exhibit 9 is going to be Final Attach to
17 Stoffel to Bischoff.

18 (EXHIBIT 9 WAS MARKED FOR IDENTIFICATION.)

19 MR. ERWIG: Q. See this on the screen in
20 front of you?

21 A. Yes.

22 Q. Does this appear to be the same document
23 minus the track changes on the right-hand side?

24 A. Could you scroll through --

25 MS. LENT: Objection.

1 MR. ERWIG: Q. You can scroll down and
2 take a look. Looks like there's a page break that's
3 been removed as well, right?

4 MS. LENT: Objection.

5 THE WITNESS: Can you scroll to the end?

6 MR. ERWIG: Q. Sure.

7 A. Appears to be a similar document --

8 Q. The question -- I'm sorry. I missed the
9 last part of that answer.

10 A. I said it appears to be similar to the
11 draft that we just looked at with the exception of
12 the comments removed.

13 Q. And --

14 A. Edits.

15 Q. Do you recognize this document as well?

16 A. I recognize, yeah, the contents of the
17 document, yes.

18 Q. Is it, again, the same -- withdrawn.

19 Is the document, again, titled preparation
20 for industry panel discussion?

21 A. Yes.

22 Q. And you're, again, listed as the
23 representative from Intuitive Surgical, right?

24 A. I was supposed to be, yes.

25 Q. Like we discussed with the other document,

1 you were preparing to give some remarks at an
2 industry panel discussion, right?

3 A. I was supposed to, yes.

4 Q. Now, question 12 on this document is "Will
5 Intuitive ever go into laparoscopic surgery," right?

6 A. Yes. That's what it says.

7 Q. And will you read the answer for me that's
8 on that document?

9 A. "We do not see ourselves in competition
10 with laparoscopy. It is about the right tool for
11 the right job."

12 Q. Anything else under that answer to question
13 12 on this document?

14 A. No.

15 Q. When you were attending that industry
16 meeting, were you intending to lie or misstate the
17 truth to anyone?

18 MS. LENT: Objection.

19 THE WITNESS: I didn't attend the meeting.

20 MR. ERWIG: Q. Did someone from Intuitive
21 attend the meeting?

22 A. I believe so.

23 Q. Who from Intuitive attended that meeting?

24 A. Can you go back up to the list again?
25 David Stoffel.

1 Q. David Stoffel have a -- well, withdrawn.

2 This document, this was sent to -- both to
3 David Stoffel and to you as well, right?

4 MS. LENT: Objection; lacks foundation.

5 THE WITNESS: Repeat the question, please?

6 MR. ERWIG: Q. Well, we looked earlier at
7 an e-mail from -- well, withdrawn.

8 Stop screen sharing this exhibit. Now, the
9 document we've just looked at, the answer to will
10 Intuitive ever go into laparoscopy was we do not see
11 ourselves in competition with laparoscopy, right?

12 MS. LENT: Objection; asked and answered.

13 THE WITNESS: The document stated that.

14 MR. ERWIG: Q. As of that time, did you
15 have a different view?

16 A. Stepped on you. Please repeat.

17 Q. As of the time of that document, as you
18 were putting together those prep notes for the
19 industry meeting, did you have a different belief on
20 that question?

21 A. Different that -- can you be more specific
22 on what you're referring to as difference?

23 Q. Well, sure. The question -- question 12
24 asks does Intuitive see itself in competition or --
25 withdrawn.

1 Question 12 asked if Intuitive would ever
2 go into the laparoscopy, right?

3 A. That was the prep question, yes.

4 Q. And there were some comments on the answer
5 to that question that appeared in the document,
6 right?

7 A. There was -- there was an answer that was
8 written as a talking point.

9 Q. We looked at an earlier copy of that
10 document and there was some comments in the margins,
11 right?

12 A. Correct.

13 MS. LENT: Objection to the earlier
14 characterization.

15 MR. ERWIG: Q. Now, at any point did you
16 make a comment that says, hey, look, I really think
17 we need to take out that particular line. I don't
18 think that I can say, that we don't see ourselves as
19 not in competition with traditional laparoscopy?

20 A. I don't recall.

21 Q. I'm sorry. I missed the answer.

22 A. I don't recall saying one way or the other.
23 I don't recall making specific comments about that
24 question or that answer.

25 Q. Do you recall anyone at Intuitive saying,

1 hey, we just really can't put that answer under
2 question 12?

3 A. Only what you just showed me from the draft
4 document that had PB6 comment on there, but I don't
5 recall that as a point of discussion at the time.

6 Q. I want to talk a little bit about the cost
7 to a patient of surgeries. Okay? Now, the cost to
8 a patient of a surgery performed using a da Vinci SI
9 or XI, that's higher than the cost of traditional
10 surgery, right?

11 MS. LENT: Objection.

12 THE WITNESS: Can you repeat? I lost
13 the -- how many costs you had in there, if you can
14 repeat that, please?

15 MR. ERWIG: Q. Yeah, no problem. We can
16 break it down so it's a nice easy question. If a
17 patient's considering a procedure, they might have
18 the choice between a traditional laparoscopy and a
19 surgery using a da Vinci robot, right?

20 A. Yes, or open procedure, yes.

21 Q. So --

22 A. Or other -- there's lots of -- depends on
23 the patient and the disease and their discussion
24 with the physician. And there's lots of other
25 choices that disease or an issue can be dealt with.

1 Could be surgical. Could be other -- other

2 treatment methodologies.

3 Q. Sure. Yeah, let's break that down. So

4 patient has a disease that might need surgery, one

5 thing the patient can do is decide not to get

6 surgery at all, right?

7 A. Right. And choose some other way of

8 treating their -- their disease.

9 Q. Now, once the patient's made a decision to

10 get surgery, then patient could decide between an

11 open surgery or a minimally invasive surgery, right?

12 A. Yes.

13 Q. The open surgery would be a surgery where

14 there's a large incision, like we talked about

15 earlier, right, or there's a potential for a large

16 incision?

17 A. Yes.

18 Q. Minimally invasive surgery, that would be

19 the type of surgery where there's very small, you

20 know, less than an inch sometimes cuts that has

21 then -- withdrawn.

22 Minimally invasive surgery, that would be

23 one where there's smaller incisions and there's

24 instruments that are inserted into the patient's

25 body through those small incisions, right?

1 A. Yes.

2 Q. Now, once -- if the patient's made the
3 decision to go with the minimally invasive surgery,
4 and the patient can either have a traditional
5 surgery or a robotic assisted surgery, right?

6 MS. LENT: Objection.

7 THE WITNESS: Yes.

8 MR. ERWIG: Q. When the patient then
9 chooses to -- that's -- that's really kind of what
10 we're focusing in on. Withdrawn.

11 What's the cost difference if the patient
12 opts for a traditional surgery versus a robotic
13 assisted surgery. Is one more expensive than the
14 other, to Intuitive's knowledge?

15 MS. LENT: Objection.

16 THE WITNESS: You're asking more expensive
17 to the patient?

18 MR. ERWIG: Q. Correct.

19 A. I think the -- the answer can vary greatly,
20 and it varies greatly whether you're talking about
21 how that patient is insured. It could be the
22 institution they're in. It could be what the
23 hospital might pass onto the patient or not. It --
24 in many situations, the cost to the patient may not
25 be different at all.

1 Q. Well, let's talk about the cost involved in
2 the actual surgical procedure, maybe that will help.
3 What's the cost for a da Vinci XI system to a
4 hospital?

5 A. The -- the -- the system itself, the
6 up-front, it could vary depending on how that system
7 is configured.

8 Q. Well, how about a range for the XI?

9 A. Could be [REDACTED]
10 depending on how many consoles are added and
11 other -- other accessories that are purchased at
12 that time.

13 Q. The low end price of a da Vinci XI, that
14 would be about [REDACTED]; is that right?

15 A. Again, depending on what is actually
16 purchased.

17 Q. And how about the da Vinci SI? What's the
18 price range for a da Vinci SI?

19 A. At the time that it was being sold?

20 Q. Yes.

21 A. Because currently not -- not sold. It --
22 roughly same range at the time -- you know, at the
23 time that SI was the platform.

24 Q. So there's been some --

25 A. Iterations to that -- innovation, yes.

1 Q. Thank you. Yeah, there's been some
2 different iterations of the da Vinci robot over the
3 years, right?

4 A. Yes.

5 Q. And the SI, that was priced at around, you
6 know, [REDACTED]; is that
7 right?

8 A. Approximate range, yeah.

9 Q. Now, the -- what's the cost for the --
10 withdrawn.

11 What's the cost for all of the equipment in
12 a tradition laparoscopic surgery?

13 MS. LENT: Objection.

14 THE WITNESS: I could tell you the
15 categories of costs. I -- I -- it would be
16 difficult to pinpoint all the -- because different
17 companies, different vendors, different
18 applications. But --

19 MR. ERWIG: Q. Sure. Let me ask -- let
20 me ask a better question. What's the -- what's the
21 average cost per procedure for traditional
22 laparoscopic surgery?

23 MS. LENT: Objection.

24 THE WITNESS: Again, this is an area where
25 it can vary greatly depending on what kind of

1 procedure you're talking about, how many instruments
2 in the procedure are used, what accessories are used
3 in the procedure.

4 MR. ERWIG: Q. So the cost for each
5 individual procedure, that can -- that can vary,
6 right?

7 A. Yes.

8 Q. And it's possible to take all of those
9 procedures and come up with a rough average of the
10 cost per procedure for traditional laparoscopic
11 surgery, right?

12 A. Not how I would -- not how I would think of
13 it.

14 Q. Well, do you have an estimate of the
15 average cost per procedure for traditional
16 laparoscopic surgery?

17 MS. LENT: Objection.

18 THE WITNESS: What would be the
19 application?

20 MR. ERWIG: Q. Well, just traditional
21 laparoscopic surgeries. So that's non-robotic
22 laparoscopic surgery. Just the cost for performing
23 a procedure?

24 MS. LENT: Objection.

25 THE WITNESS: Well, if you were to say for

1 cardiac procedure that was done with laparoscopic
2 instruments versus a general surgery procedure,
3 again, that -- that range can vary greatly. I
4 wouldn't average those -- those two. I wouldn't
5 average across the spectrum of applications. It
6 wouldn't -- it wouldn't -- wouldn't be reality.

7 MR. ERWIG: Q. Now, in general, the
8 average cost per procedure for robotic surgery,
9 that's higher than the average cost per procedure
10 for traditional laparoscopic surgery, right?

11 MS. LENT: Objection; asked and answered.

12 THE WITNESS: Restate the question, please?

13 MR. ERWIG: Q. Well, sure. There's the
14 same procedure, and you can do it either with
15 traditional laparoscopy or you can do it using a
16 robotic -- using, let's say, the da Vinci XI. The
17 cost for that procedure is generally higher using
18 the da Vinci machine than it would be with the
19 traditional instruments, right?

20 MS. LENT: Objection.

21 THE WITNESS: First, cost is pretty
22 ambiguous. There are instruments costs, staffing
23 costs, OR time costs, uhm, cost of that patient in
24 the hospital. What accessories might get used in a
25 laparoscopic procedure that are not used in the

1 da Vinci or vice versa. So, you know, again, if it
2 were at a particular procedure, you could -- you
3 could compare and contrast.

4 MR. ERWIG: Q. And that's what I'm
5 talking about. At a procedure-to-procedure level,
6 your -- Intuitive is aware that surgeries performed
7 using the da Vinci have a higher price point than
8 surgeries that are performed using traditional
9 laparoscopic methods, right?

10 MS. LENT: Objection.

11 THE WITNESS: Higher price point for -- for
12 what? I'm trying to understand.

13 MR. ERWIG: Q. Well, we can take the
14 average cost per procedure, the cost for the actual
15 procedure in terms of the equipment that's used,
16 surgery that's performed using a da Vinci XI or SI
17 is more expensive than surgery performed using
18 traditional laparoscopic instruments, true?

19 MS. LENT: Objection.

20 THE WITNESS: Would you -- again, it
21 depends on the -- the application. There -- there
22 are some procedures where da Vinci would be more
23 cost-effective. And there are others -- in a direct
24 comparison of if you looked at just direct costs or
25 whether you looked at direct cost plus operating

1 cost plus patient stay costs, you know, depends on
2 that -- how broad you go with the definition of
3 cost. Uhm, and there are some procedures where the
4 direct cost of da Vinci could be greater than a
5 laparoscopic cost --

6 MR. ERWIG: Q. Has Intuitive --

7 A. -- or open --

8 Q. I'm sorry. I didn't mean to cut you off.

9 A. Or open surgery.

10 Q. Has Intuitive performed research on the
11 price per procedure for surgeries -- withdrawn.

12 Has Intuitive performed research on
13 minimally invasive surgeries performed using a
14 da Vinci robot and the price of that surgery?

15 A. Yes.

16 Q. Has Intuitive also compared that number to
17 the general price for the same surgery performed
18 using traditional laparoscopic instruments?

19 A. On a surgery by surgery -- on a procedure
20 type by procedure type basis, yes.

21 Q. And on a procedure type by procedure type
22 basis, are the costs of the robotic surgery
23 generally higher, the same, or lower than
24 traditional laparoscopic surgery?

25 A. It depends. Sometimes -- sometimes lower

1 from a direct cost. Sometimes higher. Sometimes --
2 sometimes equivalent.

3 Q. You understand that there's some instances
4 where a surgery with a da Vinci surgical robot would
5 be more expensive than surgery using traditional
6 laparoscopic instruments, right?

7 A. For direct costs in procedure to procedure,
8 or are you talking about a cost that continuing care
9 for that patient. Just trying to understand the
10 specificity.

11 Q. Sure. Let's look at -- let's look at a
12 patient perspective who is considering a minimally
13 invasive surgery. Okay. And the patient has the
14 choice between a surgery using traditional
15 laparoscopic instruments and the choice using the
16 da Vinci surgical robot. With me so far?

17 A. Yes.

18 Q. Now, that patient has a -- can either
19 choose the -- withdrawn.

20 There's a -- there's some situations where,
21 for that patient, the da Vinci surgery is more
22 expensive than the traditional surgery, right?

23 A. More expensive --

24 MS. LENT: Objection.

25 THE WITNESS: When you say more expensive,

1 more expensive to who?

2 MR. ERWIG: Q. To the patient.

3 A. Again, it goes back to the earlier question
4 that if a patient has insurance and the insurance
5 covers, it may be no cost efforts to the patient
6 between open laparoscopic or robotic surgery.

7 Q. Well, the total cost -- let's take
8 insurance out of the picture. The situations where
9 the total cost that has to be paid, whether that's
10 by the patient or by insurance, is higher for
11 surgery performed using the da Vinci than it is for
12 surgery performed using traditional laparoscopic
13 methods, right?

14 MS. LENT: Objection.

15 THE WITNESS: Not universal.

16 MR. ERWIG: Q. But in many instances,
17 true?

18 MS. LENT: Objection.

19 THE WITNESS: In some instances, again,
20 procedure by procedure, uhm, it could be -- direct
21 cost could be more expensive.

22 MR. ERWIG: Q. Intuitive is aware that
23 patients choose to pay more for the da Vinci
24 surgical robot -- withdrawn.

25 Intuitive is aware that patients, in many

1 situations, pay more to have a surgery conducted by
2 a surgeon using the da Vinci robot than using
3 traditional laparoscopic instruments, right?

4 A. Am I aware or is Intuitive aware that the
5 patient is paying more? Again, in most situations,
6 patients have insurance and those procedures,
7 whether it's laparoscopic or robotic or open, are
8 covered by their insurance. So I don't know that --
9 in those cases, I don't know that -- what the true
10 cost might be to that patient. It -- it likely
11 varies.

12 Q. Well, sir, Intuitive is certainly aware
13 that there are procedures where the cost of surgery
14 with the da Vinci is higher than the cost of surgery
15 with traditional laparoscopic instruments, right?

16 MS. LENT: Objection; vague.

17 THE WITNESS: You know -- again, you're
18 asking from the patient perspective. Hospitals have
19 all kinds of billing rates. We -- we sell our
20 product to the hospital. The hospital charges that
21 patient, and then that patient, if they have
22 insurance, seeks reimbursement for that. And I
23 can't tell you what hospitals charge patients. It
24 would vary greatly by hospital -- by hospital
25 system, by procedure type.

1 MR. ERWIG: Q. Now, sir, Intuitive's done
2 market research, right?

3 A. We do -- we do all kinds of market
4 research, yes.

5 Q. Part of that market research is figuring
6 out the price that consumers are willing to pay for
7 surgeries using different types of methods, right?

8 A. But our -- our -- our customer that
9 purchases our equipment, our systems, is a hospital
10 customer. So the market research is primarily
11 around their alternatives, what other technologies
12 that they buy and treat similar conditions.

13 Q. So your understanding that Intuitive
14 performs no market research on the consumers
15 willingness to pay for robotic surgeries versus
16 traditional surgeries?

17 MS. LENT: Objection.

18 THE WITNESS: I'm not aware of specific
19 market research around patients willingness to pay.

20 MR. ERWIG: Q. To Intuitive's knowledge,
21 what companies in the United States currently have
22 FDA approval in the area of minimally invasive soft
23 tissue robotic surgery?

24 A. I believe there's a -- a number -- couple
25 that come to mind are TransEnterix and Medrobotics.

1 And -- but they're, you know, they may not be as
2 broadly indicated as what da Vinci is because it's
3 procedure by procedure approval.

4 Q. So the -- when you say indicated, what do
5 you mean by that?

6 A. It's that you receive a -- an approval to
7 apply that technology to a given procedure type. So
8 not every system out there can be compared to every
9 system in terms of its applicability. One might
10 have a more narrow applicability based on FDA
11 approval. One might have a broader.

12 Q. So there's a number -- I want to unpack
13 kind of what you said. There's a number of
14 different systems, right?

15 A. Yes.

16 Q. And those systems have differing levels of
17 applicability, that is they're approved for
18 different types of procedures by the FDA; is that
19 right?

20 A. Yes.

21 Q. There's some that have very narrow
22 approval, maybe for one or two procedures.

23 A. Some -- some -- it will a spectrum. Some
24 were approved for a number of procedures. Some may
25 be approved for more than a handful of procedures.

1 Q. And how many procedures is the da Vinci SI
2 approved for?

3 A. It is many. Uhm, it would be a relatively
4 long list. I can give you some of those procedures.

5 Q. Well, don't need to get into the specifics
6 because I understand that would be a long list. But
7 how about just a general ballpark. You know, is it
8 a hundred procedures? Is it 200 procedures? About
9 how many?

10 A. I would -- I would have to list them out
11 rather than guessing the number.

12 Q. More than 20?

13 A. I'd say more than 20.

14 Q. More than 50?

15 A. Probably not more than 50 types. It
16 depends on where you categorize type because they're
17 variants of a given procedure that could be
18 indicated.

19 Q. Is there any surgical robot other than the
20 da Vinci that's received FDA approval for that same
21 swath of procedures that the da Vinci has FDA
22 approval for?

23 A. They received -- TransEnterix system, that
24 is fairly broad in its application, approved for
25 general surgery laparoscopic procedures.

1 Q. Is that the TransEnterix Senhance?

2 A. Yes.

3 Q. Any other robotic surgery devices -- well,
4 withdrawn.

5 Any other robots like the da Vinci that
6 have received FDA approval for as broad of a
7 spectrum of procedures as the da Vinci has received?

8 A. Yeah --

9 MS. LENT: Objection.

10 THE WITNESS: Restate the question, please?

11 MR. ERWIG: Q. Sure. You mentioned that
12 the -- one of the robots that has relatively broad
13 approval is the TransEnterix Senhance, right?

14 A. Yes.

15 Q. And that robot received FDA approval on
16 those procedures, right?

17 A. Yes.

18 Q. Are there some procedures that the da Vinci
19 performs that the TransEnterix can't perform?

20 A. I don't recall the overlap or non-overlap
21 of their broad procedures and our procedure set that
22 is indicated.

23 Q. Are there any other surgical robots besides
24 the Intuitive da Vinci and the TransEnterix Senhance
25 that have FDA approval on the broad range of

1 procedures that the da Vinci is approved on?

2 A. Not to my knowledge.

3 Q. Is Intuitive aware of any other robots?

4 MS. LENT: Objection.

5 THE WITNESS: Uhm, let me clarify. In the
6 United States?

7 MR. ERWIG: Q. Sorry. Yeah, I should --
8 let me ask a clean question so we have a good
9 record. Withdrawn.

10 Is Intuitive aware of any robots, other
11 than the Intuitive da Vinci and the TransEnterix
12 Senhance, that have received FDA approval for the
13 broad swath of procedures that the da Vinci has
14 received FDA approval for?

15 MS. LENT: Objection.

16 THE WITNESS: I'm aware of other systems.
17 Maybe not that breadth of product application -- or
18 procedure application.

19 MR. ERWIG: Which -- well, withdrawn.

20 I'm going to screen share our next exhibit.

21 This will be Plaintiff's Exhibit 10. Make sure to
22 get it in the share file. This is 220 Rosa to
23 Vavoso. 2/20/17 Rosa to Vavoso. Will be
24 Plaintiff's Exhibit 10. Screen share.

25 (EXHIBIT 10 WAS MARKED FOR IDENTIFICATION.)

1 MR. ERWIG: Q. See this on the screen in
2 front of you?

3 A. Yes.

4 Q. Do you recognize this document?

5 A. I don't recall the document specifically,
6 but I -- I understand the context.

7 Q. Does this appear to be an e-mail from Dave
8 Rosa to yourself and Marshall Mohr at Intuitive
9 Surgical?

10 A. Yes.

11 Q. Who is Dave Rosa?

12 A. He's Intuitive chief business officer.

13 Q. What are his responsibilities as a chief
14 business officer of Intuitive?

15 A. He has commercial responsibility for global
16 sales, marketing, business development.

17 Q. And you see the subject line of this e-mail
18 is, "Forward 2/21 meeting."

19 Do you see that?

20 A. Yes.

21 Q. And that would be -- given that this e-mail
22 was sent on 2/20/2017, safe to say that that's a
23 meeting the next day on February 21st, 2017?

24 A. It indicates a 2/21 meeting.

25 Q. The attachments to that e-mail are

1 Intuitive agenda.PDF and competitive landscape.PDF.

2 Do you see that?

3 A. I see those words called out next to

4 attachment, yes.

5 Q. Did you receive those attachments from Dave

6 Rosa on February 20th, 2017?

7 A. I don't recall.

8 Q. Was -- any reason to believe you didn't

9 receive those attachments based on this e-mail?

10 A. Well, only under -- it could be Dave just

11 indicating that he's getting ready to meet with Raj

12 Vattikuti. So I don't know if it was a reply or if

13 it was forwarded as -- with attachments. If they

14 were, then they were. I just -- I don't recall

15 the -- I'd have to see the attachments to recall

16 whether -- whether I recognize it.

17 MR. ERWIG: It's okay. We can look at the

18 attachment next. This will be Exhibit 11. This

19 will be 2/20/17 Attach to Rosa to Vavoso. And this

20 is the attachment titled competitive landscape.

21 (EXHIBIT 11 WAS MARKED FOR IDENTIFICATION.)

22 MR. ERWIG: Q. Do you see that?

23 A. I see that.

24 Q. Does this appear to be a document titled

25 competitive landscape?

1 A. It's labeled on the top competitive

2 landscape.

3 Q. Did you receive this document?

4 A. Can you page down so I can see the second

5 page, please?

6 Q. Sure.

7 A. I don't recall this specific document.

8 Q. I want to draw your attention to 0.4 on

9 this document under a section labeled price of

10 surgery. Do you see that?

11 A. Yes.

12 Q. I'm actually going to start with question

13 2. There's a question labeled capital costs. Do

14 you see that?

15 A. Yes.

16 Q. And it writes, "No one has any real clue on

17 the pricing."

18 Do you see that?

19 A. Yes.

20 Q. And then the fourth bullet point under this

21 is, "Medtronics is likely to price it." It being --

22 does that refer to the Medtronics robot?

23 A. I don't know.

24 Q. "Medtronics is likely to price it, not only

25 keeping in mind the ISI monopoly, but also the

1 likely future entrance."

2 Do you see that?

3 A. It's what it says.

4 Q. ISI, is that Intuitive?

5 A. I assume it's referring to Intuitive.

6 Q. What does ISI stand for?

7 A. Intuitive Surgical Incorporated. This

8 is --

9 Q. I want to turn to question one where it

10 says area of -- well, withdrawn.

11 I want to turn to 0.1 where it reads "area

12 of surgery." Do you see that?

13 A. Yes.

14 Q. The first bullet point says, "Medtronics is

15 a company, believes to have its surgical robots

16 cater to those areas of surgery where Intuitive has

17 least or no presence."

18 Do you see that?

19 A. I see that.

20 Q. What was your understanding of Medtronics's

21 robot design as of February 20th, 2017?

22 MS. LENT: Objection; vague.

23 THE WITNESS: Can you define understanding?

24 MR. ERWIG: Well, were you aware that in

25 2017 there was a discussion about a potential robot

1 being developed by Medtronics.

2 A. In 2017, likely aware that they were
3 developing a robot.

4 Q. Can you --

5 A. I don't know the exact timing of -- sort of
6 when I became aware of that, but it -- 2017 seems
7 reasonable.

8 Q. Can you explain to me what you -- what you
9 mean by you have some awareness of it?

10 A. I've been with the company for 15 years.
11 And every year I've been with the company I have
12 heard that competition is coming with a robot, and
13 so -- and likely players in that were going to be
14 Medtronic amongst other companies. So -- but now
15 it's a lot more specificity than that over the
16 years. And likely not a lot of specificity of what
17 they were going to do in 2017.

18 Q. When you say since you've been with the
19 company, is that the 15 years that you've been with
20 Intuitive or is that the six -- five, six years that
21 you've been as a -- as a senior vice president of
22 Asia?

23 A. Yeah, I was referring to 15 years of being
24 with the company.

25 Q. So that would be as earlier as 2006. Is

1 that when you joined?

2 A. Correct.

3 Q. You mentioned that every year that you've
4 been with the company you heard, you know,
5 competition is coming or someone's developing a
6 robot, right?

7 A. You would hear -- you would hear that sort
8 of rumor in the -- in the market.

9 Q. Since you've started in 2006, until 2020 --
10 well, withdrawn.

11 When was the TransEnterix Senhance granted
12 FDA approval for the broad range of applications
13 that the da Vinci has FDA approval for?

14 MS. LENT: Objection.

15 THE WITNESS: I don't know the date.

16 MR. ERWIG: Q. Was it after 2015?

17 A. I don't know. Going to have to go back and
18 understand it.

19 Q. In 2000 -- well, withdrawn.

20 You mentioned that since you'd started
21 Intuitive, you would hear that competition was
22 coming every year. Now, in 2006 did any competitor
23 develop a robot that was competitive with the
24 da Vinci?

25 MS. LENT: Objection.

1 THE WITNESS: Not -- not that I recall.

2 MR. ERWIG: Q. How about in the period
3 between 2006 and 2010? Any competitor develop a
4 robot that was competitive with the da Vinci in the
5 area of minimally invasive soft tissue surgery?

6 A. In -- can you define in the question --
7 when you refer to competitive --

8 Q. Well, for a robot to be competitive with a
9 da Vinci system in the United States, has to have
10 FDA approval to perform similar procedures, right?

11 MS. LENT: Objection.

12 THE WITNESS: If it's a technology that is
13 an alternative choice, uhm, it would be at the
14 procedure level. It would have to be approved for
15 that procedure.

16 MR. ERWIG: Q. And so that's -- that's
17 kind of the scope that I'm asking about is. In the
18 period between 2006 and 2010, were there any robots
19 that received FDA approval to perform the same
20 procedures that the da Vinci surgical robot could
21 perform?

22 A. Not that I can recall.

23 Q. How about between 2010 and 2015, any robots
24 in the United States that received FDA approval to
25 perform the same procedures that the da Vinci

1 surgical robot can recall -- can perform?

2 A. I don't know.

3 Q. Well, as Intuitive's 30(b)(6) witness, are
4 you aware of any robots that received FDA approval
5 between 2010 and 2015 for the same procedures that
6 the da Vinci surgical robot has FDA approval for?

7 MS. LENT: Objection; vague.

8 THE WITNESS: I'm aware of the two
9 companies I mentioned. I just do not recall when
10 did they receive their FDA approval.

11 MR. ERWIG: Q. Well, in this document, at
12 least, it says that the Medtronics CEO announced
13 that it expects to see material revenue from its
14 surgical robots in fiscal year 2019. It is expected
15 to be launched in the first half of 2018.

16 Do you see that?

17 A. Given this document is likely not even an
18 Intuitive document, so I don't know where -- I don't
19 know the basis for it. I don't know where it came
20 from.

21 Q. Well, it's certainly Bates-stamped with an
22 Intuitive Bates label, right?

23 A. I don't know what that number means.

24 Q. It was a document that was sent as an
25 attachment in an e-mail from Dave Rosa to you,

1 right?

2 A. I don't know where it originated from
3 because before that the e-mail showed that the prior
4 e-mail came from Raj Vattikuti, who is not an
5 Intuitive employee.

6 Q. Let's take this exhibit down and go back to
7 the prior e-mail. Actually, I'll ask more
8 generally. Since 2017, what companies have received
9 FDA approval to market and sell robots that can
10 perform minimally invasive soft tissue surgeries?

11 A. Again, I can't answer the question relative
12 to the specificity of the date. I -- within the
13 last four years -- sometime in the last four years,
14 there are two companies that I'm aware of that have
15 come to market in the U.S.

16 Q. Who are those companies?

17 A. Medrobotics and TransEnterix.

18 Q. Let's talk about the specific robots that
19 each one of those companies manufactured.

20 TransEnterix manufactures the Senhance, right?

21 A. Yes.

22 Q. And what procedures does the Senhance have
23 FDA clearance to perform?

24 A. I believe they have a broad general surgery
25 laparoscopic indication and gynecology application.

1 Q. And how about the -- what's the Medrobotics
2 robot called?

3 A. I refer to it as the Medrobotic. I
4 don't -- I don't recall if they've got a specific
5 name for that or if it's the med robotic. I think
6 Flex is the name that's typically associated with
7 it.

8 Q. And what FDA approval does the Medrobotics
9 Flex have?

10 A. Transoral surgery and colorectal.

11 Q. Is that -- now, explain to me what you mean
12 by that?

13 A. Transoral would be in the application to
14 operate through the natural orifice of the mouth.
15 So transoral, for a variety of procedures, uhm,
16 at -- basically, tongue, typically cancer
17 procedures -- cancer removal procedures. Colorectal
18 surgery is on the other end of that. Colon surgery
19 or rectal resection, so portions of your bowel
20 system are removed.

21 Q. And that -- those procedures the chol-oral
22 and colorectal, those aren't performed by making
23 incisions in the patient's body; is that right?

24 A. I think considered to be a -- what's called
25 natural orifice, so either through the mouth or the

1 anus.

2 Q. And that's a different type of FDA approval
3 than, for example, the da Vinci robot has, right?

4 MS. LENT: Objection.

5 THE WITNESS: It would be considered in the
6 realm of minimally invasive surgery.

7 MR. ERWIG: Q. Well, the da Vinci --

8 A. Again -- but again, the FDA approves
9 indication by procedure by procedure.

10 Q. Is the da Vinci SI or the da Vinci XI, are
11 those approved for colo-oral [sic] or colorectal
12 surgeries?

13 A. They are.

14 Q. What is the procedure for -- well,
15 withdrawn.

16 You mentioned that the TransEnterix
17 Senhance has a general -- well, can you mention to
18 me again what you described the clearance for the
19 FDA approval for the TransEnterix Senhance has?

20 A. General surgery and gynecology laparoscopic
21 surgery.

22 Q. Does the Medrobotics Flex have that same
23 clearance from the FDA?

24 A. I don't believe so.

25 Q. Is there any surgical robot that has that

1 clearance of -- withdrawn. The TransEnterix

2 Senhance has -- is there any robots -- withdrawn.

3 Other than the da Vinci SI and XI and the

4 TransEnterix Senhance, do any robots have clearance

5 from the FDA to perform those two areas of surgery?

6 A. Can you repeat the question, please?

7 Q. Well, sure. You mentioned there's two

8 areas of surgery that the TransEnterix Senhance is

9 generally cleared for, right?

10 A. Yes.

11 Q. I want to make sure I have those exactly

12 accurate because they're a little bit long. So can

13 you just restate them for me one more time?

14 A. General surgery and gynecologic

15 laparoscopic surgery.

16 Q. There any other areas that you're aware of

17 that the TransEnterix Senhance has FDA approval for?

18 A. Not that I'm aware.

19 Q. And do those two areas -- are those all of

20 the areas that the da Vinci surgical robot has FDA

21 clearance for?

22 A. The -- the broad areas of general surgery

23 application and gynecology application, uhm, we have

24 indications within that, within those spaces, yes.

25 Q. There are other broad spaces that the

1 da Vinci has indications for it, other than general
2 surgery and gynecological laparoscopic?

3 A. Urologic procedures. Number of procedures
4 within that area of practice. Number of procedures
5 within thoracic. Number of procedures within
6 cardiac.

7 Q. So just to make sure that we get it clear,
8 the da Vinci has clearance in general surgery; is
9 that right?

10 A. Yes.

11 Q. When I say clearance, I mean has FDA
12 approval in. Do you understand that?

13 A. Yes.

14 Q. The da Vinci has approval in gynecological
15 or gynecologic laparoscopic surgery?

16 A. In the areas of gynecology, there are
17 approvals, yes.

18 Q. And then you mentioned thoracic surgery, I
19 believe?

20 A. Thoracic surgery would be another area of
21 approval.

22 Q. Does the TransEnterix Senhance have any
23 approval in the area of thoracic surgery?

24 A. Not that I'm aware of.

25 Q. Another category that you mentioned for the

1 da Vinci robot is -- was it urologic surgery?

2 A. I mentioned cardiac and urologic.

3 Q. Are those two separate categories, or are
4 those one category?

5 A. Two separate.

6 Q. So for cardiac surgery, is the TransEnterix
7 Senhance have FDA approval for cardiac surgery?

8 A. Not that I'm aware of.

9 Q. You also mentioned urologic surgery as a
10 category; is that correct?

11 A. I did.

12 Q. The TransEnterix Senhance, are you --
13 withdrawn.

14 Does the TransEnterix Senhance have FDA
15 approval for urologic surgeries?

16 A. It might be contained under the general
17 surgery indication. I don't know how broad exactly
18 that was.

19 Q. For the -- I'm sorry. I didn't mean to cut
20 you off.

21 A. In -- in some academic circles, urologic
22 can fit in general surgery. So I just don't know
23 the specific group for the urologic procedures.

24 Q. Now, so for the da Vinci, are there any
25 indications outside of general surgery, gynecologic

1 laparoscopic, thoracic, cardiac, and urologic, or

2 does that the cover the range of FDA?

3 A. Head and neck.

4 Q. I'm sorry. What --

5 A. Head and neck. That would be the specialty

6 area where transoral robotic surgery.

7 Q. Does Senhance -- the TransEnterix Senhance

8 have FDA approval for head and neck surgery?

9 A. I don't believe so.

10 MR. ERWIG: I'm going to screen share our

11 next exhibit. Some handwritten notes that I've

12 taken as we've discussed. So on the left-hand side,

13 there's the da Vinci robot. You see that? Now you

14 can. Centered it. See that?

15 (EXHIBIT 12 WAS MARKED FOR IDENTIFICATION.)

16 THE WITNESS: Yes.

17 MR. ERWIG: Q. On the right-hand side,

18 there's the Senhance. That's from TransEnterix,

19 right?

20 A. Yes.

21 Q. And I've reflected here that the da Vinci

22 has clearances for general surgery, gynecologic

23 laparoscopic or subset of that, thoracic surgery,

24 cardiac surgery, urologic surgical, and specialty

25 head and neck surgery from the FDA.

1 Do you see that?

2 A. Yes.

3 Q. Does that accurately reflect the FDA
4 clearances for the da Vinci surgical robot?

5 MS. LENT: Object to the form. And object
6 to the handwritten exhibit.

7 THE WITNESS: Could you repeat the
8 question, please?

9 MR. ERWIG: Q. Sure. My question is
10 just are there any other areas of clearance that the
11 da Vinci has outside of the ones that I've listed on
12 this page?

13 A. Not outside the ones that are mentioned.

14 Q. Then on the right-hand side of --

15 A. That I recall.

16 Q. I'm sorry.

17 A. Not outside the ones I mentioned that I can
18 recall. But --

19 Q. On the right-hand side, I've made a column
20 labeled Senhance. Do you see that?

21 A. Yes.

22 Q. You mentioned that the Senhance has
23 clearance for general surgery, which might include
24 urologic surgery clearance as well, right?

25 A. Correct.

1 Q. And the Senhance also has clearance for
2 gynecologic laparoscopic surgery, right?

3 A. I believe so.

4 Q. Are you aware of any other areas that the
5 TransEnterix Senhance has FDA clearance for?

6 A. I'm not aware.

7 Q. I'm going to mark this as Exhibit 12.

8 MS. LENT: I'm going to restate my
9 objection to using handwritten documents like this
10 to summarize much more lengthy and detailed
11 testimony of the witness.

12 MR. ERWIG: Let's go off the record. We'll
13 take a break and talk about timing.

14 MS. LENT: How much -- go ahead. Just
15 don't leave, Glenn.

16 MR. ERWIG: I was going to say --

17 THE REPORTER: (Clarification.)

18 VIDEOGRAPHER: We're off the record.

19 (The deposition was in recess from 11:49 to
20 12:00.)

21 VIDEOGRAPHER: We are back on the record.
22 The time is 12:01.

23 MR. ERWIG: Q. Mr. Vavoso, are there any
24 robots, other than the da Vinci and the TransEnterix
25 Senhance, that have FDA clearance in the area of

1 general surgery?

2 A. Well, general surgery is a broad category
3 and oftentimes colorectal surgery is -- would be
4 under that category. So the Medrobotic Flex system,
5 for that indication, could be considered a general
6 surgery procedure -- general by its very nature,
7 category.

8 Q. Any others, other than the Senhance, the da
9 Vinci, and the Medrobotics Flex, in that category
10 that have FDA approval?

11 A. Not that I'm aware of.

12 Q. In the area of gynecologic laparoscopic
13 surgery, are there any robots that have FDA approval
14 for minimally invasive surgery for gynecologic
15 laparoscopic surgery, other than the da Vinci and
16 the Senhance?

17 A. Not that I'm aware of.

18 Q. Are there any robots that have FDA approval
19 in the area of thoracic surgery other than the
20 da Vinci robot?

21 A. No.

22 Q. Are there any robots that have FDA approval
23 for procedures in the area of cardiac surgery other
24 than the da Vinci robot?

25 A. No.

1 Q. Are there any robots that have FDA approval
2 in the area of urologic surgery other than the
3 da Vinci robot?

4 A. I don't know the general surgery indication
5 that TransEnterix has, if it's considered to be in
6 there. I don't think --

7 Q. Are there any robots, other than the
8 Intuitive da Vinci, that have FDA clearance for
9 procedures in the head and neck area?

10 A. You said besides the Medrobotic?

11 Q. I said other than the Intuitive da Vinci.

12 A. Uhm, the Medrobotic system is indicated in
13 head and neck area for transoral robotic surgery.

14 Q. Can the Medrobotics Flex perform all of the
15 same procedures in the head and neck area that the
16 Intuitive da Vinci can?

17 A. I don't know.

18 Q. Are there procedures that the da Vinci has
19 FDA approval for in the head and neck area that
20 the -- that no other robot has FDA approval for?

21 A. I don't believe so. But --

22 Q. What other robot has approval in those
23 areas?

24 A. The Medrobotic Flex system.

25 Q. Any others?

1 A. Not that I'm aware of.

2 Q. Now, the Medrobotics Flex system doesn't
3 have clearance in gynecologic laparoscopic surgery;
4 is that right?

5 A. Correct.

6 Q. Doesn't have clearance in the area of
7 thoracic surgery, right?

8 A. Right.

9 Q. Doesn't have clearance in the area of
10 cardiac surgery, right?

11 A. Yes.

12 Q. And it doesn't have any clearance in the
13 area of urologic surgery either, right?

14 A. Yes.

15 Q. To Intuitive's knowledge, are there any
16 other companies that have FDA approval in the area
17 of minimally invasive soft tissue robotic surgery
18 other than Intuitive, TransEnterix, and Medrobotics?

19 A. In the U.S., not -- not -- no.

20 Q. For a robot to be used for a surgery in the
21 United States, it has to have FDA approval; is that
22 right?

23 A. Yeah, I'm sorry. I missed that part of
24 your question. Correct.

25 Q. Well, I was just -- I was clarifying. It

1 may not have been clear in the question. But --
2 let's make sure we have a clean record. So --
3 withdrawn.

4 For a robot to be used for a surgery in the
5 United States, it needs to have FDA approval for the
6 procedure it's being used for, right?

7 A. Yes.

8 Q. So to the extent that there's robots for
9 surgeries that exist outside of the United States,
10 those can't be used for surgeries inside the United
11 States, right?

12 A. Without FDA approval, correct.

13 MR. ERWIG: And there are no robots that
14 have FDA approval in the United States for the areas
15 that we've been talking about other than the --
16 well, withdrawn.

17 I'm going to screen share our next exhibit.
18 This will be Plaintiff's Exhibit 13.

19 (EXHIBIT 13 WAS MARKED FOR IDENTIFICATION.)

20 MR. ERWIG: Q. It's going to be 6/4/18
21 Bradshaw to Rosa and Vavoso. Screen share.
22 Can you see this on the screen in front of
23 you, Mr. Vavoso?

24 A. Yes.

25 Q. Do you recognize this?

1 A. I don't recall it.

2 Q. Does this appear to be an e-mail from Phil
3 Bradshaw at Intuitive Surgical to Dave Rosa,
4 yourself, and others at Intuitive?

5 A. Yes.

6 Q. Now, Mr. Bradshaw writes that "What I think
7 we should do behind the scenes is develop a
8 competition talk tracker of all the areas they
9 mention then train our people, most of which have
10 not come across any competition in their time at
11 ISI."

12 Do you see that?

13 A. I see that.

14 Q. This e-mail was sent on June 4th, 2018,
15 right?

16 A. Yes.

17 Q. Now, Mr. Bradshaw -- who is Phil Bradshaw?

18 A. He was the general manager for United
19 Kingdom.

20 Q. Mr. Bradshaw mentions that most Intuitive
21 people have not come across any competition in their
22 time at ISI. Do you see that?

23 A. I see what he wrote, yes.

24 Q. Take this exhibit down. I want to get a
25 sense of the current market share in the area of

1 minimally invasive soft tissue robotic surgery. We
2 talked about how in that area there's various
3 categories of procedures that robots can be approved
4 for, right?

5 A. Yes.

6 Q. And it sounds like the da Vinci robot has
7 the broadest level of clearance, including general
8 surgery, gynecologic laparoscopic, thoracic,
9 cardiac, urologic, and head and neck, right?

10 A. In those areas, yes.

11 Q. Are there any other robots that are
12 approved by the FDA in all of those areas?

13 A. No.

14 Q. And the only robots that have clearance in
15 any of those areas would be the TransEnterix
16 Senhance, Medrobotic Flex, and the da Vinci as well,
17 right?

18 A. Yes.

19 MS. LENT: Objection; asked and answered.

20 MR. ERWIG: Q. The Senhance, that has a
21 smaller approved procedure base than the da Vinci,
22 right?

23 MS. LENT: Objection; asked and answered.

24 THE WITNESS: At a category level. Many
25 procedures that they have underneath that level,

1 specific procedures.

2 MR. ERWIG: Q. Well, the da Vinci is FDA
3 approved for a far greater number of procedures than
4 either the TransEnterix Senhance or Medrobotics
5 Flex, right?

6 MS. LENT: Objection.

7 THE WITNESS: At the procedure level, it's
8 hard to answer without going side by side in the
9 general surgery because it is such a big category.
10 But, yes, there are other categories that da Vinci
11 is approved for that are not -- are not indicated
12 for the Senhance system.

13 MR. ERWIG: Q. Or for the Medrobotics
14 Flex, right?

15 A. Or the Medrobotics Flex, yes.

16 Q. What was the total number of installed
17 da Vinci robots in the United States as of 2019?

18 A. I don't have that exact figure. About --

19 Q. Do you have a ballpark?

20 A. Greater than 3,000, 3500.

21 Q. And how about in 2020? How many installed
22 da Vinci robots were there in the U.S. as of 2020?

23 A. 35 to -- 3500 to 4,000. But I'd have to
24 check our -- check our records on that.

25 Q. What were the total numbers of installed

1 TransEnterix Senhance robots in the U.S. as of 2019?

2 A. I don't remember an exact figure.

3 Q. How about a general estimate?

4 A. Maybe 15 or less.

5 Q. That's 15 or less TransEnterix Senhance

6 robots installed in the United States, right?

7 A. Yes.

8 Q. How about the Medrobotics Flex? How many

9 Medrobotics Flex robots were installed in the United

10 States in 2019?

11 A. Difficult to say in that time period. I

12 don't have -- I don't have an exact number.

13 Q. How about an estimate?

14 A. Say in total now -- uhm, again, hard to peg

15 to that, but I'd estimate 7 to 10.

16 Q. So taking the Senhance and the Medrobotics

17 Flex together, there's maybe 25 or less installed

18 Senhance and Medrobotics robots and over 3500

19 installed da Vinci robots; is that right?

20 MS. LENT: Objection; vague.

21 THE WITNESS: Would you please repeat that

22 question, please?

23 MR. ERWIG: Q. Yeah, sure. And let's

24 break it down in terms of timing because that may

25 help. So in 2019, there were approximately 3500

1 installed da Vinci robots in the United States and
2 less than 25 installed Senhance and Medrobotics
3 robots in the United States, right?

4 MS. LENT: Objection; misstates the
5 testimony.

6 THE WITNESS: Could you just rephrase that,
7 please?

8 MR. ERWIG: Q. Sure. You mentioned the
9 Senhance, that your estimate was under 15 are
10 installed in the United States and were installed in
11 the United States in 2019, right?

12 A. Yes.

13 Q. How about the Medrobotics Flex? How many
14 were installed in the United States in 2019?

15 A. Again, hard for me to say what was in '19.
16 I have a general number for how many they have
17 today. I don't know the sequence of that, when they
18 were installed.

19 Q. What's the general number today?

20 A. 7 to 10. Somewhere in that range.

21 Q. So if we take the top range of both of
22 those numbers together, that would be 10 Medtronics
23 [sic] Flexes and 15 TransEnterix Senhances, right?

24 A. Yes.

25 Q. That would be 25 robots that are not the

1 da Vinci surgical robot from Intuitive, right?

2 A. As of today, yes.

3 Q. And then 2019, is that -- were there fewer
4 Medrobotics Flexes installed, or were there more
5 than there are today? How does -- how does that
6 compare?

7 A. It would not be more. At least that I'm
8 aware of it wouldn't be more.

9 Q. It would be seven or less installed in 2019
10 of the Medrobotics Flex, right?

11 MS. LENT: Objection.

12 THE WITNESS: I would say it's somewhere
13 less than 10 or -- or at 10.

14 MR. ERWIG: Q. Sorry. The range I had in
15 mind was a little different. So you're right. You
16 mentioned 10 or less is a range. So --

17 A. Yes.

18 Q. Let's say 10 Medrobotics Flexes, 15
19 TransEnterix Senhance, that's about the high end of
20 your estimate, right?

21 A. Yes.

22 Q. So that's 25 robots for a minimally
23 invasive soft tissue surgery in the United States,
24 right?

25 A. Yes.

1 MS. LENT: Objection; vague.

2 MR. ERWIG: Q. And that number -- that
3 number reflects the 10 Medrobotics Flexes that are
4 potentially available today, right?

5 A. Can you restate the question, please?

6 Q. What I'm getting at is in the year of 2019,
7 you mentioned there were 35 around 3500 installed
8 da Vinci surgical robots in the United States,
9 right?

10 MS. LENT: Objection; misstates the
11 testimony.

12 THE WITNESS: In that time period,
13 somewhere between 3,000, 3500.

14 MR. ERWIG: Q. So in 2019, between 3,000,
15 3500, da Vinci robots installed, right?

16 A. Yes.

17 Q. So let's take the low end of that. That's
18 3,000 installed da Vinci robots in 2019, right?

19 A. Yes.

20 Q. And of the Senhances in 2019, about how
21 many Senhance robots were installed in the United
22 States?

23 A. 15 or less.

24 Q. And how many of the Medrobotics Flex robots
25 were installed in 2019?

1 A. 10 or less.

2 Q. How about in 2020? How many da Vinci
3 robots were installed in the United States
4 approximately?

5 A. Between 3500 and 4,000.

6 Q. How many Senhances were installed in the
7 United States?

8 A. 15 or less.

9 Q. So that's the same number as in 2019,
10 right? It's the same estimate as in 2019, right?
11 May have added a robot or lost a robot, but
12 certainly less than 15 still, right?

13 MS. LENT: Objection.

14 THE WITNESS: Yeah, again, hard to peg 2019
15 and know what the competitive installs for those two
16 companies were. Uhm, my -- the range I gave was --
17 was applicable to my understanding today.

18 MR. ERWIG: Q. You mentioned competitive
19 installs. Can you describe what you mean by that?

20 A. Where technologies that are on the market
21 that can be applied to the procedures that we
22 also -- our technology can be applied to. We
23 compete for that customer to -- of their choice to
24 choose which technology they're going to purchase.

25 Q. And in 2020, what was the install base of

1 the Medrobotics Flex?

2 A. My estimate was 7 to 10 systems.

3 MR. ERWIG: Screen share next exhibit.

4 This will be Exhibit 14.

5 (EXHIBIT 14 WAS MARKED FOR IDENTIFICATION.)

6 MR. ERWIG: Q. I've created a page of
7 notes labeled competitive installs. And in 2019 the
8 da Vinci had an install base of between 3,000 and
9 3500 da Vincis; is that right? That's your
10 estimate.

11 A. Yes.

12 Q. And the TransEnterix Senhance had about 15
13 or less installed, right?

14 MS. LENT: I object to the introduction of
15 your handwritten notes as an exhibit in the
16 deposition. You can answer the question.

17 THE WITNESS: Yeah, I can't recall the
18 install estimate in 2019, but I was referencing the
19 installs that I know in roughly the range they're in
20 today.

21 MR. ERWIG: Q. So it's certainly not more
22 than 15 in 2019, to your knowledge, right?

23 A. Not that I -- not that I'm aware of.

24 Q. Medrobotics Flex, you said that had an
25 install base of about 10 or less, right?

1 A. Today. So it wasn't more than 10, 10 or
2 less.

3 Q. And then down here I have a section labeled
4 2020. And in 2020 you mentioned that the da Vinci
5 had an install base between roughly 3500 and 4,000,
6 right?

7 A. Yes.

8 Q. That would be a growth of about maybe 500
9 systems, around there?

10 A. Yes.

11 Q. In that same time period, the Senhance
12 stayed at 15 or less, right?

13 A. Yeah, I don't know if it stayed at or --
14 stayed at sounds like it was a really specific
15 number.

16 Q. Sure. May have added a couple robots, but
17 it certainly didn't get more than 15 in your
18 estimate, right?

19 A. In my estimate, yes.

20 MS. LENT: Objection.

21 MR. ERWIG: Q. Now, the Medrobotics Flex,
22 you said in 2019 that was 10 or less. And your
23 estimate for 2020 was 7 to 10, right?

24 A. Yes.

25 Q. So that would -- neither of these robots --

1 there were not more than -- withdrawn.

2 The Senhance didn't have 20 new installs in
3 2020, right?

4 A. Repeat the question, please?

5 Q. The TransEnterix Senhance did not have 20
6 installs in 2020, right?

7 A. I don't believe so.

8 Q. Medrobotics Flex, that didn't have 20
9 installs either, right?

10 A. No.

11 Q. So when customers are making a choice,
12 they're overwhelmingly choosing the da Vinci
13 surgical robot over the Senhance and the Flex,
14 right?

15 MS. LENT: Objection.

16 THE WITNESS: What do you mean by
17 overwhelmingly?

18 MR. ERWIG: Q. Well, sir, there were 500
19 or more da Vincis installed between 2019 and 2020,
20 right?

21 A. Yes.

22 Q. And there were a handful -- you know, less
23 than 20 total installs of the Senhance and the Flex,
24 right?

25 A. Yes.

1 Q. That means in the context of competitive
2 installs, between 2019 and 2020, customers
3 overwhelmingly chose the da Vinci system over the
4 Senhance and the Flex, right?

5 MS. LENT: Objection.

6 THE WITNESS: I would say they chose
7 da Vinci over those other alternatives to that
8 degree. Whether you describe it as overwhelming, I
9 don't -- I don't know what that -- what is that
10 relative to?

11 MR. ERWIG: Q. Well, it's not a small
12 margin, right? It's not like there's 500 installed
13 da Vincis and 490 installed TransEnterix and Flexes,
14 right? It's 500 against maybe 20, but definitely
15 less than 20, right?

16 A. But as we talked they're -- they're --
17 they're two different or three different
18 applications of the system. So they're -- depending
19 on the customers' requirements and what they were
20 looking for, it may not have been even a head to
21 head comparison. So I can't comment on that.

22 Q. There's situations where the customer would
23 not do a head to head comparison between the
24 da Vinci surgical robot and the Senhance; is that
25 right?

1 A. Depending on their requirements, that could
2 be true.

3 Q. There are situations where a customer
4 wouldn't do a head to head comparison between a
5 da Vinci robot and a Medtronic's [sic] Flex, right?

6 MS. LENT: Objection.

7 THE WITNESS: There would be situations
8 where they would -- depending on their requirement,
9 it may not be a head to head comparison in their
10 mind. But --

11 MR. ERWIG: I'm going to mark this as
12 Exhibit 14. We'll get it scanned in at the next
13 break. I'll stop screen sharing. What's the cost
14 of a TransEnterix Senhance robot?

15 MS. LENT: Objection.

16 THE WITNESS: What do you mean? Can you be
17 specific as to the -- what you mean by cost?

18 MR. ERWIG: Q. Well, let's say a hospital
19 is considering purchasing a da Vinci robot or a
20 TransEnterix Senhance. What are the price points
21 like?

22 A. I don't have their specifics.

23 Q. Well, is the Senhance more expensive than
24 the da Vinci?

25 MS. LENT: Objection.

1 THE WITNESS: More expensive than da Vinci
2 in -- in what aspect?

3 MR. ERWIG: Q. Well, let's focus in on
4 two models of the da Vinci robot, the SI and the XI.
5 Okay? Now, looking at the TransEnterix Senhance and
6 comparing it to the da Vinci SI, you mentioned
7 earlier that the SI had a price range of maybe
8 between 1.6 million up to a little over 2.

9 Do you remember that?

10 A. Yes.

11 Q. Is the TransEnterix Senhance -- how does
12 the TransEnterix Senhance compare, in terms of
13 pricing, to that price range?

14 A. I believe it's less.

15 Q. How much less?

16 A. I don't have a specific range, but it's
17 less.

18 Q. How about an estimate?

19 A. Again, in the U.S., right?

20 Q. In the U.S., yeah.

21 A. Again, it goes -- in terms of -- this is
22 where the specificity of the question in terms of
23 cost for -- what are we comparing it to? Well, it
24 comes with the system, different configurations.

25 Q. Well, you mentioned that for about

1 [REDACTED] the hospital could

2 purchase a da Vinci and use it for surgeries

3 potentially, right?

4 A. Yes.

5 Q. There's some other bundles or packages that

6 can add on to that and that would increase the cost,

7 right?

8 A. Yes.

9 Q. Now, I'm trying to get a sense of what the

10 lowest level for the TransEnterix Senhance would be

11 where you could get the Senhance into a hospital.

12 You can start doing a surgery with it. Do you have

13 a sense of where that price point is?

14 MS. LENT: Objection.

15 THE WITNESS: I -- I don't particularly.

16 Because it's -- they require other third-party

17 equipment to -- in order to have a functioning

18 robot. So I don't know what those costs are to the

19 customer in trying to compare it to da Vinci, could

20 be, you know, apples to orange comparison.

21 MR. ERWIG: Q. How about the Medrobotics

22 Flex. Do you have a sense of how expensive that

23 robots is to start it up on surgeries?

24 MS. LENT: Object to the form.

25 THE WITNESS: I -- I don't have an exact

1 figure. I don't know.

2 MR. ERWIG: Q. Estimate?

3 A. I don't have a good estimate.

4 Q. Does Intuitive -- withdrawn.

5 Does Intuitive do research on how

6 Medrobotics and TransEnterix price their robots?

7 A. We do. I'd have to go back and look at

8 that research to understand specifically where it

9 is.

10 Q. You didn't look at that in preparation to

11 testify today?

12 A. I -- I don't recall what that number was.

13 Q. Now, for robotic surgeries, is there some

14 training that's required before a surgeon can use a

15 da Vinci surgical robot?

16 A. Yes.

17 Q. Can you describe that training to me?

18 A. For the surgeon?

19 Q. Yes.

20 MS. LENT: Again, just one second. I'm not

21 going to stop Mr. Vavoso from answering the

22 question, but I think you're aware that we had a

23 30(b)(6) witness on this topic last weekend or last

24 week on Friday. So this testimony wouldn't be on

25 behalf of the company. This is just his personal

1 testimony.

2 MR. ERWIG: Q. You can still answer it.

3 A. Okay. You know, in general, I'll give you
4 overview. Surgeons, uhm, go through a -- several
5 different levels of their training, including
6 on-line orientation into the system, application in
7 terms how it's applied, what -- what -- the various
8 ways in which it is operated. Once they go through
9 that on-line training, there's a orientation
10 training with the system that is at their hospital
11 so they get familiarity with it.

12 They then come to a training center
13 separate from their hospital that would include
14 either cadaver or porcine model lab environment,
15 where they spend the day getting hands-on and have
16 to pass a series of technical skill sets. And then
17 once they are back to their hospital, it's up to the
18 hospital credentialing requirements as to whether
19 that surgeon has to be proctored in -- you know, in
20 a already operating robotic surgeon would oversee
21 that procedure and how many of those procedures
22 might need to be proctored. And that's a hospital
23 by hospital basis.

24 Q. Does Intuitive invest money in this
25 training of surgeons on the da Vinci surgical robot?

1 A. Yes.

2 Q. How much?

3 A. I don't have a figure on what the total
4 investment is there.

5 Q. Well, how about in 2019? How much money
6 did Intuitive spend to train and maintain a training
7 program for doctors on the da Vinci surgical system?

8 A. I don't know.

9 Q. How about an estimate?

10 A. I couldn't provide one.

11 Q. You understand that you are designated on
12 Topic 2, which includes Intuitive's investment in
13 patent protection and Intuitive's investment to
14 teach medical students and practicing doctors to use
15 the da Vinci medical system, right?

16 A. Yes.

17 Q. Are you unable to provide an answer as to
18 Intuitive's investment to teach medical students and
19 practicing doctors to use the da Vinci medical
20 system?

21 A. I would have to go back and look at what
22 the facts and figures were for 2019.

23 Q. Does Intuitive spend tens of millions each
24 year on training surgeons to use the da Vinci
25 robotic surgery system?

1 A. I don't know. I wouldn't want to guess.

2 I'd have to go back and look at -- give you a
3 specific answer.

4 Q. Why are surgeons trained on the da Vinci
5 surgical robot?

6 A. It's a complex system that they have to
7 integrate with in their operating room with staff.

8 Uhm, it is an alternate technology to the other
9 technologies that we talked about. So they have to
10 be trained on that. The FDA requires that we offer
11 training for that. But it's up to the hospital or
12 the academic program whether they have to attend
13 that training.

14 Q. The training that's performed for the
15 da Vinci robot, that -- that training's specific to
16 the da Vinci robot, right?

17 A. It is.

18 Q. In other words --

19 A. Technology itself.

20 Q. In other words, a surgeon who has gone
21 through this training process for the da Vinci robot
22 can't just transfer that training and be comfortable
23 using the TransEnterix Senhance, right?

24 A. Could you restate that question, please?

25 Q. Well, sure. You mentioned there's a --

1 there's a training process for surgeons to go
2 through before they can use the da Vinci robot in
3 surgeries, right?

4 A. We -- we have a process that we offer for
5 surgeons, if they choose to go through it or are
6 required to go through it at their hospitals.

7 Q. And that also involves the hospital --
8 involves hospital credentialing whether the -- if
9 surgeon's capable of using the da Vinci surgical
10 robot, right?

11 A. The hospital --

12 MS. LENT: Uhm --

13 THE WITNESS: -- does --

14 MS. LENT: I'm going to object. And,
15 Alexander, I just want to make sure that you
16 understand the correspondence that we've sent you.
17 Dr. Myriam Curet was designated for the portion of
18 Topic 2 that relates to investment in training
19 surgeries, not Mr. Vavoso. And she was deposed a
20 week ago. Again, your -- I won't stop him from
21 answering the questions, but he is not the 30(b)(6)
22 deponent on this topic.

23 THE WITNESS: Could you ask the question
24 again, please?

25 MR. ERWIG: Q. Sure. If a surgeon is

1 trained on the da Vinci surgical robot, can the
2 surgeon just go and safely perform surgeries using
3 the TransEnterix Senhance, or is there some another
4 training that's required?

5 MS. LENT: Object to the form.

6 THE WITNESS: You're asking about Senhance
7 training?

8 MR. ERWIG: Q. Well, we can -- we can
9 make it specific to the da Vinci robot. If a
10 surgeon goes through the profession of being trained
11 on the da Vinci robot, are there any other robots
12 that that surgeon is competent to perform surgeries
13 on just based on that training alone?

14 MS. LENT: Object to the form.

15 THE WITNESS: I don't know. I don't know
16 other companies' requirements for training or
17 whether there would be an equivalency there. But I
18 know we train our surgeons on our product, and it's
19 up to someone else to decide whether that training
20 translates to other products or not.

21 MR. ERWIG: Q. I want to talk about the
22 process for entering into the market for minimally
23 invasive soft tissue robotic surgery. And I
24 understand there's some steps that a company might
25 have to go through if they want to develop a --

1 develop a robot that might have some of the
2 capabilities of the da Vinci; is that right?

3 A. I lost the question in that. Sorry.

4 Q. Well, sure. The -- can you describe for me
5 the process by which Intuitive brought the da Vinci
6 robot to market?

7 A. I -- I can -- can you be more specific? I
8 want to make sure I'm answering the right question.

9 Q. Well, sure. There's a period of research
10 and development, right?

11 A. There is, yes.

12 Q. There was -- there's some expenses that,
13 you know, Intuitive spends money on that research
14 and development -- spent money on that research and
15 development for the da Vinci robot, right?

16 A. Yes.

17 Q. And Intuitive has to -- had to fulfill
18 certain regulatory requirements and obtain FDA
19 approval, right?

20 A. Yes.

21 Q. Is that kind of a lengthy process or is
22 that short?

23 MS. LENT: Objection.

24 THE WITNESS: You know, what I would say is
25 that the entire development process to achieving FDA

1 approval, then being able to market a system -- or a
2 system could be up to, you know, a 10-year journey.
3 So if you consider 10 years to be lengthy, uhm, that
4 would be a lengthy process.

5 MR. ERWIG: Q. You mentioned a 10-year
6 journey, would that be from the first stage of
7 research and development to ultimately obtaining FDA
8 approval?

9 A. Uhm, by the time you complete all of the
10 development work, which might require some research
11 depending on the evolution of the system or the
12 technology that is evolving, it could be clinical
13 trials, which take time. It does entail human
14 factors testing. So how does our system interface
15 with surgeons and staff? And that is usually a
16 requirement of the FDA process that we have to go
17 through. That could be a large chunk of that
18 lengthy process.

19 And you have to submit to the FDA. They
20 evaluate that submission. Uhm, there's back and
21 forth and what the iterations to that and -- you
22 know, over the course of that from concept all the
23 way through design, to -- to marketing could be
24 upwards of 10 years.

25 Q. During that time period, there's some costs

1 that have to be expended, right?

2 A. Yes.

3 Q. Intuitive also obtained patent protection

4 for it's da Vinci surgical robots; is that right?

5 A. Yes.

6 Q. Also invested money in training for

7 surgeons, right?

8 A. Yes.

9 Q. So a new company that wanted to enter this

10 field, they would potentially face some barriers to

11 entry; is that right?

12 MS. LENT: Objection; calls for a legal

13 conclusion.

14 THE WITNESS: What do you mean barriers to

15 entry?

16 MR. ERWIG: Q. Well, coming up with a new

17 surgical robot, that takes a lot of time, right?

18 A. Takes a lot of knowhow and time and

19 intellectual horsepower. And, as I said, it

20 takes -- could take up to 10 years to bring it

21 about. And presumably others that wanted to bring a

22 product, they would go through a similar process.

23 Q. One of the things --

24 A. But no different than what that process has

25 been for us.

1 Q. Well, one of the things you mentioned is
2 a -- potentially up to a 10-year development for
3 someone that wanted to bring a similar product to
4 market, right?

5 A. Yes.

6 Q. Another thing that might be -- might be
7 challenging for someone trying to make a robot would
8 be fulfilling the regulatory requirements and
9 obtaining FDA approval, right?

10 MS. LENT: Objection.

11 THE WITNESS: Said it could be a challenge?

12 MR. ERWIG: Q. Yes.

13 A. What do you mean by challenge? It's a
14 process you have to follow.

15 Q. Well, it's a lengthy -- it's not just a
16 simple process, right? There's a lot of work
17 involved in submitting something to the FDA, right?

18 MS. LENT: Objection.

19 THE WITNESS: There's -- there's work
20 involved and you have to have the technical knowhow.
21 You have to do research and development.

22 MR. ERWIG: Q. Another thing that could
23 be a challenge for a company seeking to develop a
24 surgical robot would be the capital expenditures for
25 research and development, right?

1 MS. LENT: Objection.

2 THE WITNESS: Again, I'm not sure what you
3 mean by challenge. I think, yes, you have to fund
4 all of that. I -- I don't -- hard to characterize
5 it as a challenge. You know, it's -- there's work
6 and investment that's involved.

7 MR. ERWIG: Q. You have to invest a lot
8 of money to try to bring a robot that competes with
9 a da Vinci to market, right?

10 MS. LENT: Objection.

11 THE WITNESS: Can you restate the question,
12 please?

13 MR. ERWIG: Q. Well, Intuitive had to
14 invest a lot of money to bring the da Vinci to
15 market, right?

16 MS. LENT: Objection.

17 THE WITNESS: We -- we had to -- we had to
18 and have to go through that process that you
19 described, and, yes, it requires investment.

20 MR. ERWIG: Q. And it's not a small
21 investment, right? That's a tens or hundreds of
22 millions of dollars of potential investment, right?

23 MS. LENT: Objection.

24 THE WITNESS: I don't know the -- I don't
25 know the exact cost of what that investment looks

1 like.

2 MR. ERWIG: Q. Well, do you have an
3 estimate of the amount of money that Intuitive spent
4 from start of the da Vinci program to getting FDA
5 approval?

6 A. I don't have an estimate.

7 Q. Tens of millions?

8 A. I -- I -- I couldn't guess.

9 Q. Now, in today's market there's a
10 significant -- well, there's -- withdrawn.

11 In today's market there's somewhere between
12 3500 and 4,000 installed da Vinci in hospitals
13 around the U.S., right?

14 A. Yes.

15 Q. And so any new entrant into that market
16 would have to deal with that existing adoption of
17 da Vinci robots, right?

18 MS. LENT: Objection.

19 THE WITNESS: What do you mean deal with
20 that existing?

21 MR. ERWIG: Q. Well, many hospitals have
22 invested time and money into training programs for
23 the da Vinci robot, right?

24 A. Yes.

25 Q. Their surgeons are trained on and

1 comfortable with the da Vinci robot, right?

2 A. Yes.

3 Q. And so any new company with a new robot,
4 they would have to -- you know, that would be an
5 obstacle to getting their robot widely adopted,
6 right?

7 MS. LENT: Objection.

8 THE WITNESS: What do you mean by obstacle?

9 MR. ERWIG: Q. Well, a competitor
10 couldn't just come in and suddenly have a robot in
11 every hospital, right?

12 MS. LENT: Objection.

13 THE WITNESS: They -- they would go through
14 the process of showing why their technology is
15 better and what problems is it trying to solve.
16 They would have to go through that process.

17 MR. ERWIG: Q. In that process, one of
18 the things they would be contending with would be
19 the 3500 to 4,000 already installed da Vinci robots,
20 right?

21 MS. LENT: Objection.

22 THE WITNESS: What do you mean by
23 contending?

24 MR. ERWIG: Q. Well, you know, when
25 they're trying to show off their product, a lot of

1 those hospitals already have da Vinci robots

2 installed, right?

3 A. Depends on what hospital they go to, but

4 yeah, there could be a da Vinci installed there,

5 right.

6 Q. The surgeons at that hospital are already

7 likely to be familiar with the da Vinci, right?

8 A. Some surgeons.

9 Q. Now, that company might also have to

10 contend with the patent protection that Intuitive

11 has for the da Vinci robot, right?

12 MS. LENT: Objection.

13 THE WITNESS: What do you mean by contend

14 with?

15 MR. ERWIG: Q. Well, a company that's

16 trying to develop a new robot, they would have to be

17 mindful of Intuitive's patent protection on its own

18 robot, right?

19 A. They would have to be mindful like anyone

20 else would have to be mindful about encroaching on

21 somebody's intellectual property, yes.

22 Q. And hospitals that already have a da Vinci

23 installed, they might be hesitant to completely

24 switch over to another type of technology, right?

25 MS. LENT: Objection.

1 THE WITNESS: What do you mean by hesitant?

2 MR. ERWIG: Q. Well, hospital has a
3 surgeon that's already been trained on the da Vinci
4 for a long period of time. And they have a da Vinci
5 installed and there's comfort there. That might be
6 a factor in the hospital's decision of whether to
7 choose to add a different robot, right?

8 MS. LENT: Objection.

9 THE WITNESS: Yeah, I -- I view it as
10 the -- you know, there's 65,000 surgeons in the
11 United States and maybe 20,000 have been trained on
12 da Vinci. So just because there's a da Vinci in the
13 hospital doesn't -- doesn't mean that you can't add
14 other technology that brings value to their
15 hospital.

16 MR. ERWIG: Q. You mentioned --

17 A. In -- in several cases, they have multiple
18 different ways of treating a disease within their --
19 within their hospital. So I see it similarly.

20 Q. You mentioned there's around 60,000
21 surgeons in the United States and around 20,000 of
22 those have been trained on da Vinci; is that right?

23 A. 65,000 surgeons in the United States.

24 Q. 65,000 surgeons. And of those 65,000,
25 around 20,000 have been trained on da Vinci, right?

1 A. Approximately.

2 Q. How many have received training on the
3 TransEnterix Senhance?

4 MS. LENT: Objection.

5 THE WITNESS: I don't know.

6 MR. ERWIG: Q. Any estimate?

7 A. No.

8 Q. Is it likely to be more than 30?

9 MS. LENT: Objection; lack of foundation.

10 THE WITNESS: I -- I -- I have no basis to
11 know.

12 MR. ERWIG: Q. Well, does Intuitive do
13 any sort of market research about what sorts of
14 equipment surgeons are training on?

15 A. I'm not aware of market research around
16 what technology they've been trained on.

17 Q. Would it be important for Intuitive to keep
18 tabs on what sorts of robotic instruments surgeons
19 are training on?

20 A. Yes.

21 Q. Why?

22 A. We would want to know why customers or
23 potential customers choose one technology over
24 another and what value those customers see. And
25 we'd like to earn that choice -- you know, to be

1 able to earn that right or at least to be considered
2 a new choice. So to understand that would be
3 important.

4 Q. Are you familiar with the concept of a
5 barrier to entry in general speak?

6 MS. LENT: Objection.

7 THE WITNESS: In -- in general speak -- or
8 what is meant by general speech -- speak?

9 MR. ERWIG: Q. Well, do you understand --
10 what's your understanding of the words barrier to
11 entry?

12 A. That there's some challenge. That there's
13 some process that you have to go through, and -- in
14 order to bring a product to market, in general
15 speak.

16 Q. You mentioned some challenge or process.
17 Can there be multiple challenges to bringing a
18 product to market?

19 A. Sure. There are many.

20 Q. And those might include long development
21 times, right?

22 MS. LENT: Object to the form.

23 THE WITNESS: What long development times,
24 in what way?

25 MR. ERWIG: Q. Well, that might be a

1 challenge in bringing a product to market, right?

2 There's a really long development time in the

3 development cycle of that product, right?

4 MS. LENT: Objection.

5 THE WITNESS: I think the long development

6 time is an outcome of the various process points

7 that you need to bring a medical device product to

8 market that is safe for physicians to use with their

9 patients. So I -- that's the process.

10 MR. ERWIG: I'm going to screen share

11 another exhibit. This will be -- well, first I'm

12 going to screen share a set of notes that I've

13 taken. Set of notes, at the top there, labeled

14 barriers to entry with some challenges below that.

15 (EXHIBIT 15 WAS MARKED FOR IDENTIFICATION.)

16 MR. ERWIG: Q. Do you see that?

17 A. I do.

18 MS. LENT: I'm going to object to, again,

19 to your continued use of your notes as exhibits.

20 They are completely inappropriate and do not

21 represent the sum and substance of the witness's

22 testimony.

23 MR. ERWIG: Q. Now, Mr. Vavoso, you

24 mentioned your understanding of the phrase barriers

25 to entry was -- included some challenges in the

1 development process for a product, right?

2 MS. LENT: Objection; misstates his
3 testimony. Incomplete.

4 THE WITNESS: You didn't write the words
5 general speak down.

6 MR. ERWIG: Q. I'm happy to.

7 MS. LENT: My objection remains.

8 MR. ERWIG: Q. Is that better?

9 MS. LENT: I still object.

10 MR. ERWIG: Q. Now, Mr. Vavoso, one of
11 the things we discussed was that it can be up to a
12 10-year development time for a new entrant into the
13 surgical robot space, right?

14 A. Says that, yes.

15 MS. LENT: I object to you characterizing
16 that as a barrier to entry, which is not what
17 Mr. Vavoso testified to.

18 MR. ERWIG: Q. We also discussed that
19 another challenge could be fulfilling regulatory
20 requirements for a company seeking to bring a robot
21 to market, right?

22 MS. LENT: Objection. That is not what the
23 witness testified to. That's what you wanted him to
24 say and that's why you wrote it down. I'm objecting
25 to this whole line of testimony. It's

1 inappropriate.

2 You can answer the question, Mr. Vavoso,
3 but it's inappropriate.

4 THE WITNESS: Sorry. I lost the question.
5 Could you restate it, please?

6 MR. ERWIG: Q. No problem. One of the
7 challenges to bringing a robot to market, surgical
8 robot to market, would be fulfilling regulatory
9 requirements, right?

10 MS. LENT: Objection; misstates his
11 testimony.

12 THE WITNESS: Fulfilling the FDA mandated
13 requirements is part of the process.

14 MR. ERWIG: Q. Now, one other thing that
15 we discussed was -- well, another potential barrier
16 or another -- withdrawn.

17 Another potential challenge that company
18 might face in bringing a surgical robot to market
19 would be significant capital expenditures for
20 research and development, right?

21 MS. LENT: Objection; misstates his
22 testimony.

23 THE WITNESS: Yeah, I didn't say -- I
24 didn't say that.

25 MR. ERWIG: Q. Well, sure. I'm just

1 trying to get a sense if you -- if that's true. If,
2 you know, company's trying to develop a new surgical
3 robot, one of the potential challenges that they
4 might face is that that development process costs a
5 lot of money, right?

6 MS. LENT: Can we be clear what you're
7 trying to do is to get a list of what you're going
8 to call barriers to entry and put words in his
9 mouth. So let's ask a question that is appropriate
10 as opposed to trying to force words in his mouth
11 that are contrary to what he already testified to.

12 MR. ERWIG: Ms. Lent, the speaking
13 objections are inappropriate. If you can keep your
14 objection to form, you can preserve it for the
15 record. But anything beyond that is not appropriate
16 in terms of deposition testimony, as you know.

17 MS. LENT: What you're doing is
18 inappropriate, but I will object to form and
19 Mr. Vavoso can try and answer the question to the
20 extent you ask an appropriate one.

21 MR. ERWIG: Q. Great. Thank you. Now,
22 Mr. Vavoso, one of the challenges that a company
23 trying to develop a surgical robot might face is
24 there is some significant capital expenditure that's
25 required to bring a new robot to market, right?

1 MS. LENT: Object to the form.

2 THE WITNESS: There's investments that you
3 have to make as part of this process.

4 MR. ERWIG: Q. They're not insubstantial,
5 right? Those can be significant investments, right?

6 MS. LENT: Objection.

7 THE WITNESS: They're investments in the
8 process, sir. Gauge if they're significant or
9 non-significant is --

10 MR. ERWIG: Q. We also talked about how
11 there's a -- an install base of 3500 to around 4,000
12 of installed da Vinci robots, right?

13 A. Not -- not relative to a challenge. We
14 didn't talk about that.

15 Q. We discussed that there's a current install
16 base of around 3500 to 4,000 installed da Vinci
17 robots in the United States, right?

18 A. We discussed it.

19 Q. That might be a challenge to a new company
20 seeking to develop a new surgical robot, right?

21 MS. LENT: Objection.

22 THE WITNESS: In that context, what's
23 the -- define challenge?

24 MR. ERWIG: Q. Well, a lot of hospitals
25 already have a surgical robot. They've already

1 invested a lot of time into a surgical robot, right?
2 They might have some reluctance to just switch to a
3 different one, right?

4 MS. LENT: Objection; asked and answered.

5 THE WITNESS: There -- there -- every day
6 they're free to make a choice on what they invest
7 in. Uhm, they can add other technologies and they
8 do every day.

9 MR. ERWIG: Q. Well, let's be clear. Is
10 it your position that the install base of 3500 to
11 4,000 installed da Vinci robots presents no
12 challenge to a competitor seeking to enter the
13 market. Is that your testimony?

14 MS. LENT: Objection.

15 THE WITNESS: What do you mean by no
16 challenge?

17 MR. ERWIG: Q. Well, when discussing some
18 challenges that a developer of a robot might face,
19 right, and I want to know if it's your testimony, on
20 behalf of Intuitive, that the install base of 3500
21 to 4,000 installed da Vinci robots poses no
22 challenge at all to a manufacturer of a competing
23 surgical robot?

24 MS. LENT: Object.

25 THE WITNESS: It is -- whoever is bringing

1 technology to market has to show that their
2 alternative is better than the current set of
3 alternatives out there. And I don't see the size of
4 install base as being a barrier to that.

5 MR. ERWIG: Q. Well, the current size of
6 the install base is 3500 to 4,000 installed da Vinci
7 robots, right?

8 A. Yes.

9 Q. And there's -- whatever competitor would
10 have install base of zero, right?

11 MS. LENT: Objection.

12 THE WITNESS: What competitor?

13 MR. ERWIG: Q. Well, a new competitor
14 trying to bring a new robot to the market. They'd
15 start with an install base of zero, right?

16 A. They would.

17 Q. And Intuitive -- Intuitive's not starting
18 from an install base of zero, right?

19 MS. LENT: Objection.

20 THE WITNESS: What do you mean started? I
21 don't understand your question.

22 MR. ERWIG: Q. Well, as of today,
23 Intuitive has an install base of between 3500 and
24 4,000 da Vinci surgical robots, right?

25 A. There is 3500 to 4,000 da Vinci systems in

1 hospitals, yes.

2 Q. For a new company entering into that space,
3 they would have an install base of zero in
4 hospitals, right?

5 A. Yes.

6 Q. Another issue -- another potential
7 challenge for a company might be patent protection,
8 right? It's complicated --

9 MS. LENT: Object --

10 MR. ERWIG: Q. -- intellectual property
11 issues, right?

12 MS. LENT: Objection; asked and answered.
13 Compound.

14 THE WITNESS: Say the question again,
15 please?

16 MR. ERWIG: Q. Well, for a company
17 developing a new surgical robot, one challenge would
18 be Intuitive's patent protection on its technology,
19 right?

20 MS. LENT: Objection; asked and answered.

21 THE WITNESS: Company bringing new
22 technology has to be mindful of the intellectual
23 property that belongs to another company, yes.

24 MR. ERWIG: Q. And we also talked
25 about -- you mentioned that there's 65,000 surgeons

1 and that 20,000 of those are already trained on the
2 da Vinci surgical robot, right?

3 A. Approximately.

4 Q. So that might be a challenge for a new
5 company is getting surgeons trained on their new
6 surgical robot, right?

7 MS. LENT: Objection; asked and answered.

8 THE WITNESS: No.

9 MR. ERWIG: Q. It's your position that
10 existing -- withdrawn.

11 Is it Intuitive's position that the
12 existing training of surgeons has no impact on
13 potential competitors' ability to enter the market?

14 MS. LENT: Objection; outside the scope of
15 the 30(b)(6). You can ask him in his individual
16 capacity.

17 MR. ERWIG: Q. Sorry. I didn't get the
18 answer?

19 A. Yes.

20 Q. Going to mark this as Exhibit 15. We can
21 go off the record.

22 VIDEOGRAPHER: Excuse me.

23 MS. LENT: And I continue to object to that
24 being an exhibit.

25 VIDEOGRAPHER: Is this a good time to

1 change out the video?

2 MR. ERWIG: I was just suggesting we take a
3 break.

4 VIDEOGRAPHER: All right. This is the end
5 of Media 2. We're off the record at 1:02.

6 (The deposition was in recess from 1:02 to
7 1:35.)

8 VIDEOGRAPHER: Here's the beginning of
9 Media No. 3 in the deposition of Glenn Vavoso. We
10 are back on the record at 1:35.

11 MR. ERWIG: I'm going to screen share our
12 next exhibit. This will be Exhibit 16. It says
13 6/8/17 Mohr to Vavoso, et al.

14 (EXHIBIT 16 WAS MARKED FOR IDENTIFICATION.)

15 MR. ERWIG: Q. Can you see this on the
16 screen in front of you, Mr. Vavoso?

17 A. Yes.

18 Q. Does this appear to be -- well, withdraw.

19 Do you recognize this?

20 A. I'm just reading through it. All right. I
21 don't recognize it.

22 Q. Well, you notice that you're listed in the
23 to column, right?

24 A. Yes.

25 Q. The from column, that's from Catherine Mohr

1 at Intuitive surgical; is that right?

2 A. Yes.

3 Q. Who is Catherine Mohr?

4 A. She is president of the Intuitive
5 Foundation.

6 Q. And it says down here in the e-mail footer
7 that she's the vice president of strategy Intuitive
8 Surgical, Inc. Was that her position as of
9 June 8th, 2017?

10 A. Yes.

11 Q. Does this appear to be an e-mail from
12 Catherine Mohr to yourself and others at Intuitive
13 Surgical with the subject LRM meeting?

14 A. Yes.

15 Q. Looks like there's an attachment that's
16 called U.S. scenarios and brainstorming.docx. Do
17 you see that?

18 A. I see that label, yes.

19 Q. And Ms. Mohr writes, "The attached Word
20 document has the notes from the assumptions slash
21 forces and factors slash indicators record as well
22 as the scenarios idea generation slash ranking and
23 workshop topics."

24 You see that?

25 A. Uh-huh, yes.

1 MR. ERWIG: Stop screen sharing this

2 exhibit. Our next exhibit is going to be

3 Exhibit 6 -- Exhibit 17. Sorry.

4 (EXHIBIT 17 WAS MARKED FOR IDENTIFICATION.)

5 MR. ERWIG: Q. That will be the labeled

6 attach -- 6/8/17 Attach to Mohr to Vavoso, et al.

7 Share this with you. Can you see this on the screen

8 in front of you?

9 A. Yes.

10 Q. Do you recognize this document?

11 A. No.

12 Q. Any reason to believe that this isn't the

13 attachment to Ms. Mohr's e-mail?

14 A. No.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with their lengths representing data values. The 10th bar from the top is the longest, while the 11th bar is the shortest. The lengths of the bars vary significantly, with some being nearly full-width and others being much shorter.

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Bar Index	Approximate Length (%)
1	35
2	95
3	85
4	100
5	88
6	55
7	100
8	15
9	90
10	95
11	75
12	45
13	55
14	90
15	98
16	15
17	58
18	85
19	40
20	100
21	95
22	88
23	95
24	70
25	80

Bar Index	Relative Length (approximate)
1	15
2	85
3	75
4	100
5	95
6	15
7	90
8	85
9	95
10	100
11	90
12	95
13	55
14	45
15	90
16	95
17	65
18	55
19	85
20	90
21	55
22	40
23	25
24	80
25	95
26	30

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, one above the other. The lengths of the bars represent values on a scale from 0 to 100. The bars vary in length, with some being very short and others being nearly full-width.

Bar Index	Approximate Length (%)
1	35
2	100
3	55
4	95
5	75
6	25
7	90
8	100
9	95
10	95
11	35
12	50
13	30
14	100
15	55
16	90
17	25
18	90
19	15
20	85
21	65
22	90
23	100
24	35
25	95

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 MR. ERWIG: Stop screen sharing this
8 exhibit. Now, our next exhibit is going to be
9 Exhibit 18.

10 (EXHIBIT 18 WAS MARKED FOR IDENTIFICATION.)

11 MR. ERWIG: Q. This will be 8/24/19
12 Darling to Vavoso, et al. I'm going to screen share
13 this with you. You see this on the screen in front
14 of you?

15 A. Yes.

16 MR. ADAMS: You can't say that because
17 you -- I don't know what you're asking.

18 MR. ERWIG: You're not muted. Let's go off
19 the record.

20 MR. ADAMS: You want to know what's the
21 bus? If there's less work on the bus. I don't
22 think so.

23 VIDEOGRAPHER: We're off record at 1:53.

24 (The deposition was in recess from 1:52 to
25 1:53.)

1 VIDEOGRAPHER: We're back on the record.

2 The time is 1:53.

3 MR. ERWIG: Q. Zoom screen sharing

4 Exhibit 18. Who is Calvin Darling?

5 A. Can you scroll down? Senior director of
6 finance investor relations.

7 Q. Does he work for Intuitive?

8 A. Yes.

9 Q. And you're also copied on this e-mail,
10 right?

11 A. Yes.

12 Q. Does this appear to be an e-mail from
13 Calvin Darling to you and others from Intuitive sent
14 on August 24th, 2019?

15 A. Yes.

16 Q. And the subject is investor news 8/19 to
17 8/23. Do you see that?

18 A. Yes.

19 Q. And there's some attachments, including
20 Piper robotic surgery.pdf. Do you see that?

21 A. I see the attachment names, looks like from
22 outside analysts.

23 Q. You received these attachments along with
24 this e-mail, right?

25 A. It would appear, yes.

1 MR. ERWIG: I'm going to stop screen

2 sharing this exhibit. Next exhibit is going to be

3 Exhibit 19.

4 (EXHIBIT 19 WAS MARKED FOR IDENTIFICATION.)

5 MR. ERWIG: Q. And it will be one of the

6 attachments labeled as 8/24/19 Attach to Darling to

7 Vavoso. Do you see this on the screen in front of

8 you?

9 A. Yes.

10 Q. Do you recognize this?

11 A. No.

12 Q. Does this appear to be to the Bernstein

13 report that was attached to the e-mail that we just

14 referenced?

15 A. Is that a question?

16 Q. That is a question.

17 A. It appears to be, yes.

18 Q. Now, I want to talk with you about some

19 parts of this report. The title is Intuitive

20 Surgical, what do experts think about Medtronics'

21 new surgical robot.

22 Do you see that?

23 A. Yes.

24 Q. It says, "This week Medtronic announced

25 plans to unveil the company's long anticipated soft

1 tissue surgical robot at an analyst day on
2 September 24th, 2019."

3 Do you see that?

4 A. Yes.

5 Q. Then I want to draw your attention to the
6 next couple of sentences where it reads, "This is a
7 major development after years of speculation.
8 Intuitive Surgical has held a monopoly position in
9 the soft tissue robotic surgery market for the last
10 two decades." See that?

11 A. Yes.

12 Q. Did Intuitive Surgical hold a monopoly
13 position in the soft tissue robotic surgery market
14 in the two decades prior to 2019?

15 MS. LENT: Objection.

16 THE WITNESS: Define monopoly.

17 MR. ERWIG: Q. Well, I want to know, when
18 you're reading this, you agree with this statement
19 or you disagree with this statement that's in this
20 analyst report?

21 A. I neither agree or dis -- I don't know what
22 the statement -- not -- not a company statement.
23 It's from an outside analyst.

24 Q. Right. I want to get your take on this
25 particular sentence. And so reading this now, the

1 sentence, "Intuitive Surgical has held a monopoly
2 position in the soft tissue robotic surgery market
3 for the last two decades."

4 You agree with that statement, disagree
5 with it, or what's your position on that statement?

6 MS. LENT: Objection.

7 THE WITNESS: I would disagree with it as a
8 statement.

9 MR. ERWIG: Q. On what basis?

10 A. On the basis of the market in which we
11 serve.

12 Q. Well, let's talk about the market that's
13 referenced here, which is the soft tissue robotic
14 surgery market. Okay?

15 A. That's one of the reasons why I disagree
16 with the statement.

17 Q. Well, the statement says, "Intuitive
18 Surgical has held a monopoly position in the soft
19 tissue robotic surgery market," right?

20 A. It's what it says, yes.

21 Q. Doesn't say Intuitive Surgical has held a
22 monopoly position, for example, in the open robotic
23 surgery market, right?

24 A. It does not say that.

25 Q. And so just want to focus in on the soft

1 tissue robotic surgery market, which -- to clarify,
2 which companies have FDA approval to operate in the
3 soft tissue robotic surgery market?

4 MS. LENT: Objection.

5 THE WITNESS: The FDA doesn't grant
6 approval to operate in a market. So I don't quite
7 understand your question.

8 MR. ERWIG: Q. Well, the soft tissue
9 robotic surgery market, that may include a number of
10 potential soft tissue surgeries, right?

11 MS. LENT: Objection.

12 THE WITNESS: Please ask the question
13 again?

14 MR. ERWIG: Q. Well, the -- let's just
15 make it simpler. Is the da Vinci robot capable of
16 performing soft tissue robotic surgery with FDA
17 approval?

18 A. It's capable of doing surgery, and it
19 happens to be a robotic system, yes.

20 Q. Well, and the surgeries that it's capable
21 of performing, those are soft tissue surgeries,
22 right?

23 A. They are soft tissue surgeries.

24 Q. And those soft tissue surgeries, they're
25 not done using tradition laparoscopic instruments.

1 They're performed using robotic surgery, right?

2 MS. LENT: Objection.

3 THE WITNESS: Can you restate the question,
4 please?

5 MR. ERWIG: Q. Sure. The Intuitive --
6 when Intuitive does a -- withdrawn.

7 When there's a soft tissue surgery done
8 with the da Vinci robot, that's a soft tissue
9 robotic surgery, right?

10 A. It is.

11 Q. And you're familiar with that phrase as it
12 relates to surgeries performed with the da Vinci
13 robot, right?

14 MS. LENT: Objection; vague.

15 THE WITNESS: But it's not like that
16 patient came from the soft tissue robotic surgery
17 market. That patient came from a choice decision of
18 whether they're going to have open laparoscopic or
19 robotic. And so the soft tissue market is open
20 robotic and laparoscopic because those are the three
21 modalities you --

22 MR. ERWIG: Q. Well, sir, I understand
23 that -- so it's a perspective that you have. But
24 really focus in on the exact question that I'm
25 asking, which is there's surgeries -- so patient may

1 have a choice initially between an open surgery and
2 minimally invasive surgery, right? That's one type
3 of choice that a patient might have, right?

4 A. Lots of choices along the patient
5 continuum. Could be one choice they've got to make.

6 Q. When a patient is considering a type of
7 surgery, one of the choices they have to make is, am
8 I going to have an open surgery. I'm going to have
9 a minimally invasive surgery, right?

10 A. Yes.

11 Q. Then the patient's got another choice to
12 make after that, right, which is am I going to have
13 a tradition laparoscopic surgery? I'm going to have
14 a robotic soft tissue surgery, right?

15 A. Yes.

16 MS. LENT: Objection.

17 MR. ERWIG: Q. And now I just want to
18 focus in -- I understand that there's other, you
19 know, if you start at the very top level, there
20 might be other elements. But I just want to focus
21 in on that soft tissue robotic surgery component.
22 In that soft tissue robotic surgery component, once
23 the patient's made that choice, da Vinci's the only
24 option, right?

25 MS. LENT: Objection.

1 THE WITNESS: We talked earlier that the
2 other robotic systems, depending on the indication,
3 could also serve as a choice.

4 MR. ERWIG: Q. So once you're in that
5 market, it would be da Vinci. It would be the
6 TransEnterix Senhance, and the Medrobotics Flex,
7 right?

8 MS. LENT: Objection; mischaracterizes his
9 testimony.

10 THE WITNESS: And what are you defining as
11 market?

12 MR. ERWIG: Q. Well, if that word
13 bothers you, we can just use a different term, which
14 is once a patient's made a choice to get a minimally
15 invasive robotic surgery, the options there are, you
16 know, the da Vinci robot, the TransEnterix, the
17 Medtronics, right?

18 A. Medrobotics.

19 Q. Medrobotics. I'm sorry.

20 A. Yeah, those would be -- those would be the
21 choices.

22 Q. For some surgeries you can't use either the
23 Medrobotics or the Senhance, right?

24 MS. LENT: Objection.

25 THE WITNESS: For some surgeries.

1 MR. ERWIG: Q. Let's use a specific
2 category. For cardiac surgeries, for example, if a
3 patient's decided they want a minimally invasive
4 robotic surgery for a cardiac procedure, the
5 da Vinci is approved for that procedure. Neither
6 the Medrobotics or the Senhance, neither of those
7 robots can perform that procedure, right?

8 A. Well, there's a difference between they
9 could perform the procedure, whether they're
10 approved to perform it. And surgeons can follow
11 what they want. So just kind of be clear on that.
12 If a surgeon wanted to take a Senhance and try a
13 cardiac operation, they have the authority to do
14 that. Whether it was --

15 Q. So --

16 A. -- it was approved or not. But if the
17 patient wanted an approved FDA procedure for
18 cardiac, the da Vinci would be their -- would be
19 their choice in that situation.

20 Q. And it would be their only choice, right?

21 A. It -- it would be the choice as you've
22 narrowed that down.

23 Q. Now, just talking about that market, which
24 is -- or we don't have to use market if it makes you
25 uncomfortable. We can say that segment of minimally

1 invasive soft tissue robotic surgery where we've got
2 the da Vinci, TransEnterix Senhance, Medrobotics
3 Flex. That statement -- in that segment, Intuitive
4 has a monopoly position, right?

5 MS. LENT: Objection.

6 THE WITNESS: Define monopoly.

7 MR. ERWIG: Q. Has over 98 percent market
8 share, right?

9 MS. LENT: Objection.

10 THE WITNESS: So are we talking segment or
11 are we talking market?

12 MR. ERWIG: Q. That segment. Market
13 share?

14 MS. LENT: Objection.

15 THE WITNESS: If you narrowed the choice
16 down to cardiac surgery that's robotic, and you said
17 well, what is the segment share, it would be
18 da Vinci is the --

19 MR. ERWIG: Q. Da Vinci would have
20 100 percent of that market share, correct?

21 MS. LENT: Objection.

22 THE WITNESS: They would have that segment
23 share. That's the applicability of the system.

24 MR. ERWIG: Q. And how about for the
25 system where there's some overlap. One of the ones

1 we talked was general surgery, right, where there's
2 the Senhance and there's the Medrobotics Flex,
3 potentially, and then there's the da Vinci. How
4 about in that segment?

5 MS. LENT: Objection; vague.

6 THE WITNESS: Yeah, define the segment?

7 MR. ERWIG: Q. Well, it's general
8 surgeries for which the da Vinci, the Senhance, and
9 the Flex all have FDA approval. What's the
10 Intuitive share of that segment?

11 MS. LENT: Objection.

12 THE WITNESS: Don't have an exact number of
13 that.

14 MR. ERWIG: Q. How about an estimate?

15 MS. LENT: Objection.

16 THE WITNESS: The segment that you've
17 narrowed to say there's a general surgery procedure,
18 and it's only done robotically, uhm, so is it
19 Senhance, Medrobotics, or Intuitive, it greater than
20 90 percent?

21 MR. ERWIG: Q. Greater than 95 percent?

22 A. I don't know.

23 Q. After you take the segment of the
24 procedures that the da Vinci is authorized to
25 perform, compare that to the procedures that the

1 TransEnterix and the Medrobotics are authorized to
2 perform, the da Vinci performs in a greater range of
3 categories, right?

4 MS. LENT: Objection.

5 THE WITNESS: There are more categories
6 that are approved for da Vinci than TransEnterix or
7 Medrobotics.

8 MR. ERWIG: Q. Now, if you layer those
9 across and we look at number of surgeries performed
10 by da Vinci robot against number of surgeries
11 performed by Senhance robot, number of surgeries
12 performed by Medrobotics robot, can you give me a
13 sense of how those numbers compare in -- let's say
14 in 2020?

15 MS. LENT: Objection.

16 THE WITNESS: Again, you know, it's not a
17 number that we measure. I don't have an exact
18 number. It's not something that we look at.

19 MR. ERWIG: Q. Intuitive doesn't look at
20 the number of surgeries performed by the Senhance or
21 by the Medrobotics?

22 A. We -- not information that is readily
23 available. We make estimates as to the market of
24 surgery and modality of which the approach is for a
25 given procedure, procedure by procedure.

1 Q. Does Intuitive make its U.S. based
2 employees sign non-compete agreements?

3 A. Yes.

4 MR. ERWIG: I'm going to screen share our
5 next exhibit. This will be Exhibit 20.

6 (EXHIBIT 20 WAS MARKED FOR IDENTIFICATION.)

7 MR. ERWIG: Q. This will be 1/24/17 Child
8 to Vavoso, et al. Can you see this on the screen in
9 front of you, Mr. Vavoso?

10 A. Yes.

11 Q. Who is Craig Child?

12 A. Head of HR.

13 Q. You see you're copied on this e-mail?

14 A. Yes.

15 Q. The subject line of this e-mail is
16 proprietary rights agreement please do not forward.

17 Do you see that?

18 A. Yes.

19 Q. It's dated 1/24/2017. You see that?

20 A. Yes.

21 Q. There's some attachments including
22 proprietary rights agreement FAQ and proprietary
23 rights agreement.ca.pdf. Do you see that?

24 A. Yes.

25 Q. Does this appear to be an e-mail from Craig

1 Child to you and others at Intuitive sent on
2 January 1st -- 24th, 2017 attaching proprietary
3 rights agreement FAQ and proprietary rights
4 non-competition agreement?

5 A. Yes.

6 MR. ERWIG: Stop screen sharing this
7 document. And we'll take a look at some of the
8 attachments. First attachment we'll take a look at
9 is the Proprietary Rights and Non-competition
10 Agreement dot Non-sales.

11 Do you have this on the screen in front of
12 you.

13 (EXHIBIT 21 WAS MARKED FOR IDENTIFICATION.)

14 THE WITNESS: Yes.

15 MR. ERWIG: Q. I'm going to scroll
16 down -- well, withdrawn.

17 Does this appear to be a proprietary rights
18 and non-competition agreement issued by Intuitive
19 Surgical?

20 A. It does.

21 Q. I'm going to scroll down with you to -- too
22 far. Section 9.3. Section 9 is titled
23 non-competition. Do you see that?

24 A. I see that.

25 Q. There's a section labeled -- or there's a

1 part of that paragraph that says, "Employee agrees
2 that during the period of employee's employment and
3 for 12 months thereafter employee will not directly
4 or indirectly engage in any of the activities
5 described in sections 9.1, 9.2, or 9.3 below."

6 Do you see that?

7 A. Yes.

8 Q. And I want to go to section 9.3 which
9 reads, "Perform any job function on behalf of any
10 competitor defined below the company."

11 Do you see that?

12 A. Yes.

13 Q. And then it defines competitor in that
14 term. Do you see that?

15 A. Yes.

16 Q. Can you read the definition of competitor
17 in that section 9.3?

18 A. It means any -- competitor means any
19 business which directly competes or plans to compete
20 with the company at any of the following areas,
21 robotic assisted surgery, robotic assisted catheter
22 control, augmented reality surgery.

23 Q. Is there any mention in that definition of
24 traditional hospital services?

25 MS. LENT: Objection; vague.

1 THE WITNESS: I may not have heard the
2 question right. Can you restate?

3 MR. ERWIG: Q. Is there any mention in
4 this section of United States based hospitals?

5 A. There is no -- there is no mention of
6 hospitals there.

7 Q. Is there any mention of a business that
8 develops traditional laparoscopic instruments?

9 A. Does not state laparoscopic instruments in
10 that paragraph.

11 MR. ERWIG: Can take this exhibit down.
12 We're going to -- next Exhibit 22 will be
13 Proprietary Rights Agreement FAQ.

14 (EXHIBIT 22 WAS MARKED FOR IDENTIFICATION.)

15 MR. ERWIG: Q. Screen share. Do you see
16 this on the screen in front of you?

17 A. Yes.

18 Q. Does this appear to be an Intuitive
19 Surgical document titled FAQs regarding new
20 proprietary rights agreements for U.S. employees
21 dated January 31st, 2017?

22 A. Yes.

23 Q. Scroll to Section 5, which is titled what
24 is a non-compete obligation and why do only some
25 proprietary rights agreement include them.

1 Do you see that?

2 A. Yes.

3 Q. I want to draw your attention to the second
4 paragraph here that starts with -- where there's a
5 section that starts with "to that end."

6 Do you see that? Highlight it for you.

7 A. Yep, I see that.

8 Q. And it reads, "To that end we're permitted
9 by law, our proprietary rights agreements include
10 non-compete language that prohibits employees from
11 working in competitive businesses narrowly defined
12 as a business that directly competes with Intuitive
13 or plans to compete with Intuitive in the areas of
14 robotic assisted surgery, robotic assisted catheter
15 control, or augmented reality surgery."

16 Do you see that?

17 A. I do.

18 MR. ERWIG: Is it your understanding that
19 a -- well, withdrawn.

20 Take this exhibit down. Screen share our
21 next exhibit.

22 (EXHIBIT 23 WAS MARKED FOR IDENTIFICATION.)

23 MR. ERWIG: Q. This will be Exhibit 23.

24 This will be March 2017 SAB Recap.

25 Can you see this on the screen in front of

1 you?

2 A. Yes.

3 Q. Does this appear to be a document from
4 March 21st, 2017, titled Intuitive Surgical sales
5 advisory board?

6 A. Yes.

7 Q. What is the Intuitive Surgical sales
8 advisory board?

9 A. It is a collection of -- a variety of roles
10 within the U.S. sales organization that are, uhm,
11 called as advisory board to allow kind of free flow
12 of information from senior leadership to -- to sales
13 representation in the U.S.

14 Q. There's a bullet labeled SD -- well,
15 withdrawn.

16 There's a bullet labeled SFDC team. Do you
17 see that?

18 A. I do.

19 Q. What is the SFDC team?

20 A. It's sales force dot-com.

21 Q. Are you a member of that team?

22 A. Not currently, but it is in my purview. So
23 it depends how you define team. I think in the
24 context of 2017, I was there based on -- it's a
25 system that we have, and it's in my purview today.

1 Q. So as of March 21st, 2017, you were
2 involved on the SFDC team; is that right?

3 A. Yeah, I think that just characterized who
4 was in attendance.

5 Q. So you were in attendance at this meeting
6 on March 21st, 2017?

7 A. I don't know that for sure, but --

8 Q. Was it likely that you were in attendance
9 if you're listed here under the SFDC team?

10 A. Can you scroll down through the document?
11 Just want to see the contents.

12 Q. Well, here's -- there's a section that
13 starts, "Discussion with Glenn Vavoso."

14 Does that help refresh your --

15 A. It would appear I was there, yes.

16 Q. And I want to ask you a couple of questions
17 about this document. One is number 10, where it
18 reads proprietary rights agreement.

19 Do you see that?

20 A. Yes.

21 Q. And bullet point E under that is, "Only
22 applies to other robotic slash computer assisted
23 surgery companies that compete with ISI."

24 Do you see that?

25 A. Yes.

1 Q. As of this time, did you have an
2 understanding of what this proprietary rights
3 agreement would extend to. That is, who the robotic
4 computer assisted companies were that the
5 proprietary rights agreement applied to?

6 A. Can you restate the question, please?

7 Q. Well, as of this time -- well, withdrawn.

8 Did you sign a proprietary rights
9 agreement?

10 A. I believe I did.

11 Q. When you signed it, do you have an
12 understanding of what robotic slash computer
13 assisted surgery companies that proprietary rights
14 agreement applied to?

15 A. There's a -- there's a proprietary right
16 agreement and then there's a non-compete. They're
17 two separate, and the non-compete doesn't apply in
18 California of which I reside.

19 Q. So -- sorry. I didn't mean to cut off.

20 A. No, I'm done.

21 Q. For employees residing outside of
22 California, did you have any idea about the robotic
23 slash computer assisted surgery companies that
24 competed with ISI as of March 2017?

25 A. I don't know the specific list that that

1 covered. Uhm, there's variety of companies that we
2 would have considered as robotic computer assisted
3 surgery companies at that time.

4 Q. I want to scroll down to page 5 and ask you
5 about question 4. See if there's a point here
6 listed, "Competition is coming."

7 Do you see that?

8 A. Yes.

9 Q. And there's a little Sub-point A that says,
10 "Discussion on what ISI needs to do to prepare for
11 competition."

12 Do you see that?

13 A. Yes.

14 Q. What do you understand is meant by that?

15 A. It was a -- addressing preparation for do
16 you understand the value of those products that are
17 coming. How might our product be positioned
18 relative to that value? Understand why customers
19 would want to choose that product over our product.
20 Uhm, discussion of a variety of features, advantages
21 relative to our features, advantages.

22 Q. Now, Sub-point B under that lists hospital
23 decision making, what is the risk of change, is
24 change worth the effort?

25 Do you see that?

1 A. I do.

2 Q. What does that relate to?

3 A. State the question, please?

4 Q. Well, you've talked about what bullet point

5 A reflected. I want to get a sense of what bullet

6 point B reflects since you were in attendance at

7 this meeting. So what light can you shed on what's

8 meant by hospital decision making, what is the risk

9 of change, is change worth the evidence?

10 A. Yep. Similar to the preparation part of

11 that, which is -- is the change worth the effort in

12 terms of the value. If customers are making a

13 choice between one product or the other,

14 understanding what is the hospitals decision

15 criteria for how they determine value and how

16 they're going to make that decision.

17 Q. When it says change worth the effort,

18 what's meant by that?

19 A. Is the -- is that technology -- is that

20 value going to deliver on -- relative to what their

21 expectation is.

22 Q. Well, worth the effort. It doesn't say,

23 you know, will -- will hospitals switch over. It

24 talks about is change worth the effort, right?

25 A. I don't know the context of the -- is

1 change worth the effort. They have to evaluate
2 those technologies and make a decision whether
3 they're going to purchase that or not. And there's
4 a process those customers have to go through.
5 They'll go through that process if there's high
6 value that that technology brings.

7 Q. At least as it's listed here, it reflects
8 that a changeover from Intuitive's products to
9 another competitor, that would take some effort,
10 right? It certainly wouldn't be an effortless
11 process, right?

12 MS. LENT: Objection; lacks foundation.

13 THE WITNESS: The context, you know, it's
14 not stated there. Hospitals make an effort to take
15 on new technology all the time. And there are
16 hospitals that don't have a da Vinci. So hospitals
17 decision making to buy another robotic technology,
18 they're going to make that relative to what they
19 already have, how they do surgery. They may
20 evaluate that against da Vinci, uhm, but, you know,
21 effort is they've got to go down the path of
22 bringing that technology in.

23 MR. ERWIG: Q. So -- want to make sure
24 that we capture some parts of that answer. One of
25 the things you mentioned was that hospitals that

1 already have a da Vinci they may -- they may
2 evaluate -- have -- the fact that they have that
3 da Vinci when they're making a decision to purchase
4 a different product; is that right?

5 A. No. I can restate that. What I said was
6 that they're making -- they're making a comparative
7 decision. That -- what is the value that -- if they
8 have a da Vinci system, again, not every hospital
9 has a da Vinci. But they're making -- if they do
10 have a da Vinci, they're making a decision, the
11 value that is provided by da Vinci system relative
12 to an alternative technology.

13 Q. Now, the alternative technologies to the
14 da Vinci system would be the TransEnterix Senhance
15 and the Medrobotics Flex, right?

16 MS. LENT: Object to the form.

17 THE WITNESS: I think in the context of
18 this, yes. But they -- they evaluate new
19 technologies all the time to -- how to treat
20 disease. They're not always surgical technologies.

21 MR. ERWIG: Q. So in the context of
22 robotic surgery technologies, they'd be potentially
23 evaluating the TransEnterix Senhance and the
24 Medrobotics Flex, right?

25 A. As well as other competitors, but -- for

1 companies looking to come.

2 Q. There's certainly no others competitors
3 today that have FDA approval for a minimally
4 invasive surgical robot, right?

5 A. Doesn't mean that they're not evaluating
6 that and talking to those companies about timing or
7 whether they want to consider making that purchase.

8 Q. One of the things that the hospital's
9 considering is they already have a da Vinci, they're
10 looking at can that other system do something else
11 or something additional, right?

12 MS. LENT: Objection.

13 THE WITNESS: I -- you know, again, with
14 technology, they're going to evaluate what value
15 does that bring, and it will be relative to lots of
16 current technologies or approaches they have. One
17 of which would be da Vinci.

18 MR. ERWIG: Q. Now, for a hospital to be
19 using the da Vinci in surgery, one of the things
20 they have to do is they have to buy the da Vinci
21 robot, right?

22 A. They do.

23 Q. And they have to buy EndoWrists and
24 equipment for that robot as well, right?

25 A. They have to buy a whole system, EndoWrists

1 instruments, accessories.

2 Q. And as part of that, maintaining a da Vinci
3 robot, they have to keep buying EndoWrists over
4 time, right?

5 A. If they choose to continue to do da Vinci
6 surgery, they would, yes.

7 Q. Another thing hospitals have to do is make
8 sure their surgeons are trained on the da Vinci
9 robot, right?

10 A. They have to credential their surgeons --
11 or the medical community of that hospital has to
12 credential their surgeons to perform procedures.

13 Q. That takes some time, right?

14 A. I -- some amount of time to do that, yes.

15 Q. And there's some money involved too in
16 sending surgeons off to do training, right?

17 MS. LENT: Objection.

18 THE WITNESS: Maybe money for the surgeon,
19 not every surgeon is employed by the hospital. So
20 I'm not sure who pays the cost of the -- of that
21 training. It would vary.

22 MR. ERWIG: Q. Intuitive often pays for
23 training, right?

24 A. I --

25 MS. LENT: Objection.

1 THE WITNESS: Can you be specific on what
2 you mean by pays for training?

3 MR. ERWIG: Q. Well, to train a surgeon
4 on a da Vinci robot, Intuitive will pay for that in
5 many instances, correct?

6 A. We will cover the cost of the lab and the
7 travel to get to that lab.

8 Q. When the surgeon's there, the surgeon's in
9 the training program for the Intuitive da Vinci
10 robot, right?

11 A. Yes.

12 Q. Now, all those things -- withdrawn.

13 The hospital -- the hospital goes through
14 all that effort, that might be something they
15 consider when they're looking at other products like
16 the TransEnterix Senhance, right?

17 MS. LENT: Objection; hypothetical.

18 THE WITNESS: I think it's one of the many
19 things they would look at if they -- if they're
20 going to evaluate the value of whatever that new
21 technology is, they're evaluating relative to what
22 they do today and all that goes along with them.

23 MR. ERWIG: Stop screen sharing this
24 exhibit. It's been a little under an hour, but I
25 think this is a good time for a break. So let's go

1 ahead and go off the record.

2 VIDEOGRAPHER: Off record. The time is
3 2:30.

4 (The deposition was in recess from 2:30 to
5 2:41.)

6 VIDEOGRAPHER: We are back on the record.
7 The time is the 2:42.

8 MR. ERWIG: Q. I want to shift gears a
9 little bit with you, Mr. Vavoso, and talk about the
10 sales contracts that Intuitive requires hospitals
11 who purchase the da Vinci robot to sign. Okay?

12 A. Okay.

13 Q. Are you aware that Intuitive requires
14 hospitals who purchase the da Vinci robot in the
15 United States to sign a sales contract?

16 A. Yes.

17 Q. You have general familiarity, as
18 Intuitive's 30(b)(6), witness with the contents of
19 those sales contracts?

20 A. Yes.

21 MR. ERWIG: We're going to look at the
22 document on the document camera together, but I'm
23 going to mark as an exhibit SLSA Conway, which is a
24 going to be Exhibit 24.

25 (EXHIBIT 24 WAS MARKED FOR IDENTIFICATION.)

1 MR. ERWIG: Q. I'm going to screen share
2 that document. See this on the screen in front of
3 you?

4 A. I do. It's a little fuzzy, but I can make
5 it out.

6 Q. Part of that is just the text on the
7 document is a little bit fuzzy. Now, does this
8 appear to be a sales license and service agreement
9 between Intuitive Surgical and Conway Regional
10 Medical Center?

11 A. Yes. Can you -- can you just page through
12 the exhibit?

13 Q. Sure.

14 A. Unless we have it in the -- do we have it
15 in document folder? I can pull it up.

16 Q. It's in the document folder. So you can
17 reference any part of it. I just want to point you
18 to some moments. If you want a moment to review it,
19 that's fine.

20 A. Did you say it was in the document folder
21 or it was not?

22 Q. I think it should be. If you refresh, it
23 should appear there.

24 MS. LENT: Yeah, I've got it. You should
25 be able to find it if you refresh.

1 MR. ERWIG: Q. Just let me know when
2 you're ready to talk about the document.

3 A. Okay. I'm ready.

4 Q. Does this appear to be a sales license and
5 service agreement?

6 A. Yes.

7 Q. Does Intuitive require each hospital that
8 purchases a da Vinci surgical robot to sign one of
9 these sales license and service agreements?

10 A. Yes.

11 Q. I want to talk about some of the terms in
12 that agreement with you. Zoom in so we can see it
13 more clearly. See there's a section labeled Section
14 3, system use and disposal?

15 A. Yes.

16 Q. And here there's a paragraph labeled 3.2
17 that's titled use of system. Do you see that?

18 A. Yes.

19 Q. One of the parts of that paragraph reads,
20 "Customer will not nor will customer permit any
21 third party to modify, disassemble, reverse
22 engineer, alter, or misuse the system or instruments
23 and accessories. Prohibited actions include, but
24 are not limited to, adding or subtracting any
25 customer or third-party equipment, hardware,

1 firmware, or software to or from the system."

2 Do you see that?

3 A. Yes.

4 Q. Does Intuitive include that term in each of
5 the sales contracts that it requires hospitals to
6 sign?

7 A. Yes.

8 Q. Are you aware of any contract with any
9 hospital that does not include this use of system
10 term?

11 A. Not that I'm aware of.

12 Q. And it's your understanding that paragraph
13 3.2 prohibits hospitals from using robotics repair
14 to service EndoWrists for the Intuitive da Vinci
15 surgical robots, true?

16 A. Yes.

17 Q. Go to a different portion of this with you.
18 I'll scroll out so you can see where I am in the
19 document. I've turned to page 2. Now, I'm going to
20 turn to page 3 where there's a paragraph titled
21 instrument and accessories, which I'll make bigger.

22 Do you see this on the screen in front of
23 you?

24 A. Yes, can you shift to the left just
25 slightly?

1 Q. Just wanted to make sure that you can see
2 that it's paragraph 8. Do you see that?

3 A. Yes.

4 Q. Now, paragraph 8, I've highlighted a
5 section here that reads, "Any other use is
6 prohibited, whether before or after the instrument
7 or accessories license expiration, including repair,
8 refurbishment, or reconditioning not approved by
9 Intuitive. This license expires once an instrument
10 or accessory is used up to its maximum number of
11 uses as is specified in the documentation
12 accompanying the instrument or accessory."

13 Do you see that?

14 A. Yes.

15 Q. What is your understanding of that term in
16 the sales agreement?

17 MS. LENT: Objection; vague.

18 THE WITNESS: You know, as we were talking
19 earlier, the complexity of the system and the full
20 integration of all the components, that you do not
21 want to have adulterated instruments or accessories
22 or other things that are modified that could make
23 that system either not work or unsafe for use.

24 MR. ERWIG: Q. Now, this talks about a
25 license that expires once an instrument is used up

1 to its maximum number of uses. Do you see that?

2 A. Yes.

3 Q. What do you understand that to mean?

4 A. The instruments have a designated number of
5 lives. And once those lives are used, then the
6 license has expired.

7 Q. Is it your understanding that hospitals can
8 repair, refurbish, or recondition an EndoWrist prior
9 to its use counter expiring?

10 A. My understanding, that occurs, yes.

11 Q. Well, it's not a question of if it occurs.
12 My question right now is just about the words in
13 this contract. And it reads, Any other use is
14 prohibited whether before or after the instrument or
15 accessories license expiration, including repair,
16 refurbishment, so forth.

17 Do you see that?

18 A. I do.

19 Q. Is it your understanding that this sales
20 contract prohibits hospitals from repairing,
21 refurbishing, or reconditioning their EndoWrists
22 regardless of how many uses are remaining?

23 A. Yes.

24 Q. So, for example, if there's some uses left
25 on the use counter and some graspers have become

1 misaligned, the hospital is not permitted, under
2 this sales contract, to realign those graspers,
3 true?

4 A. It says that they would be prohibited from
5 modifying or repairing that instrument.

6 Q. And realigning graspers, that would be --
7 would that be a repair of the instrument?

8 A. Could fall in the definition of repair.

9 Q. I want to get a sense of it. I'm not too
10 concerned of whether it falls under the definition
11 of repair or refurbishment. I just want to get a
12 sense of if a hospital realigns the graspers on an
13 EndoWrist after they become misaligned, that's
14 something that's prohibited by Section 8 of this
15 sales contract, right?

16 A. It would be.

17 MS. LENT: Objection.

18 MR. ERWIG: Q. This paragraph, paragraph
19 8, does this appear in each of the sales contracts
20 that Intuitive has with hospitals who purchase the
21 da Vinci surgical robot?

22 A. To my knowledge, yes.

23 Q. Is it your understanding, is -- withdrawn.

24 As Intuitive's 30(b)(6) witness, can you
25 identify any sales contract with the hospital that

1 does not include the language in paragraph 8?

2 A. No.

3 Q. Now, the reason that this term is included
4 is so that customers will not use EndoWrists beyond
5 the usage counter limit prescribed by Intuitive,
6 true?

7 A. No.

8 Q. Well, this mentions a license expiring,
9 right?

10 A. It does.

11 Q. The license expires when the instruments
12 reach their number of uses, right?

13 A. Yes.

14 Q. And when the instrument reaches its number
15 of uses, what are hospitals, according to Intuitive,
16 required to do under this sales contract?

17 A. To dispose of that instrument
18 appropriately.

19 Q. By dispose of that instrument, you mean --
20 you don't mean to repair or refurbish it, right?
21 You mean throw it away?

22 A. You -- correct.

23 Q. I --

24 A. I --

25 Q. -- specific medical procedures to get rid

1 of certain instruments, but it's not to reuse or
2 refurbish those instruments, correct?

3 A. Correct.

4 Q. In fact, if the instruments break prior to
5 the use counter being used up, Intuitive also
6 requires, under this sales contract, that the
7 hospitals dispose of those instruments and throw
8 them away, right?

9 A. No.

10 Q. Why is the answer no?

11 A. If -- if the customer had an instrument
12 that was broken, a grasper with jaws misaligned, we
13 would want them to report that as we have to
14 report -- part of our quality management system is
15 we have to understand what has occurred and will
16 issue a return material authorization. They will
17 receive credit for the remaining number of lives,
18 and we'll send them the new replacement instrument.

19 And that way our team can take that
20 instrument that has -- where the jaws have been
21 misaligned, and understand how that happened within
22 the set number of lives that that instrument was
23 based and understand if there's any kind of
24 manufacturing change that needs to be made. Uhm,
25 and not just understand root cause for why the

1 instrument failed because it's not designed to fail
2 within those -- within those lives that are
3 designated.

4 Q. Does Intuitive repair the instruments that
5 it receives back from customers prior to the uses
6 expiring?

7 A. No.

8 Q. What does Intuitive do with those
9 instruments?

10 A. We -- we analyze them. In some cases, the
11 process of analyzing and understanding root cause
12 further makes them un-useable. And then they're
13 disposed of.

14 Q. Has Intuitive conducted any testing after
15 receiving an EndoWrist that did not meet the use
16 counter as to whether that EndoWrist could be safely
17 repaired?

18 A. Restate the question again, please?

19 Q. Well, you mentioned that Intuitive receives
20 back some EndoWrists that have failed to meet the
21 use counter; is that correct?

22 MS. LENT: Objection.

23 THE WITNESS: No, what I said was that we
24 will receive instruments back that have had some
25 failure or some issue and the customer has processed

1 an RMA. And then our -- our RMA team will look at
2 that and understand why did the instrument fail.

3 MR. ERWIG: Q. And when the team is
4 looking at that RMA'd instrument, is there any
5 testing conducted as to whether that instrument can
6 be repaired or refurbished?

7 A. We don't repair or refurbish. So we
8 wouldn't do that --

9 Q. Has Intuitive --

10 A. -- in the course of that process.

11 Q. Sorry. I didn't mean to cut off.

12 A. I said we wouldn't do that in the course of
13 that process.

14 Q. Has Intuitive ever considered repairing or
15 refurbishing used EndoWrists?

16 A. I don't know if that has been contemplated.

17 Q. One of the things I want to ask you about,
18 turning back to the document, when an EndoWrists use
19 counter is up, Intuitive wants the customer to
20 dispose of that EndoWrist and purchase a new one
21 from Intuitive, true?

22 A. That we want them to? What does that mean
23 we want them to?

24 Q. Well, the agreement says that's what the
25 customer has to do, right, to comply with the sales

1 agreement, right?

2 MS. LENT: Objection.

3 THE WITNESS: The customers replenish their
4 stock as they use up the instrument.

5 MR. ERWIG: Q. By replenish their stock,
6 you mean they throw away EndoWrist whose use
7 counters have expired and they buy new EndoWrists
8 from Intuitive, right?

9 A. Yes.

10 Q. And paragraph 8 of this contract, that's
11 establishing that hospitals are not prohibited to do
12 anything other than that -- well, withdrawn. Let me
13 ask a better question -- withdrawn.

14 Paragraph 8 of this sales agreement does
15 not allow customers to take any other action than
16 the one we just talked about, right?

17 MS. LENT: Objection.

18 THE WITNESS: Any -- any other action is
19 pretty broad.

20 MR. ERWIG: Q. Let me narrow it down.
21 When a customer's EndoWrist reaches its number of
22 uses that Intuitive has set, under the terms of this
23 agreement, the customer is required to throw that
24 EndoWrist away, right?

25 A. They're required to dispose of it

1 appropriately.

2 Q. And then if they want to continue --

3 A. Certainly not -- certainly not use it

4 again.

5 Q. That was going to be my next question.

6 When the -- after the hospital, the customer, has

7 thrown away the EndoWrist, they will need to

8 purchase a new one from Intuitive in order to

9 continue performing surgeries with the da Vinci

10 surgical robot, right?

11 A. Yes.

12 MS. LENT: Objection.

13 MR. ERWIG: Q. Turn back to paragraph 3.

14 Now, this sales license and service agreement,

15 Intuitive enforces this agreement if it believes

16 there have been violations, right?

17 A. It -- yes. If there's contract, yes.

18 Q. And then, particular, the use of system.

19 If a hospital chooses to use the services of a third

20 party to refurbish or repair its instruments,

21 Intuitive considers that a breach of this contract,

22 true?

23 A. Yes.

24 Q. And for paragraph 8, which we'll turn back

25 to, the hospital repairs, refurbishes, or

1 reconditions an instrument at any time, Intuitive
2 considers that a breach of the contract with the
3 hospital, true?

4 A. Yes, and we would go through a resolution
5 process with them.

6 Q. But Intuitive considers it a breach, right?

7 A. Yes.

8 Q. In fact, the contract is written in such a
9 way that customers are -- they're not supposed to do
10 anything other than throw away EndoWrists, purchase
11 new EndoWrists from Intuitive, right?

12 MS. LENT: Objection; misstates the
13 testimony.

14 THE WITNESS: At the end of those useful
15 lives, they have to dispose of the instrument.

16 MR. ERWIG: Q. If the instrument breaks
17 before the number of useful lives, it gets sent back
18 to Intuitive and they buy another instrument from
19 Intuitive, right?

20 MS. LENT: Objection; misstates the
21 testimony.

22 THE WITNESS: They send -- just to restate.
23 They send the instrument back to us. There's a
24 evaluation of why that instrument failed. There's a
25 credit that's given back to the customer for the

1 remaining lives of that instrument that weren't
2 used. And that goes into our -- that learning and
3 understanding goes into our quality management
4 system.

5 MR. ERWIG: Q. Now, when you talk about
6 failure of an instrument, I want to learn a little
7 bit more about what you mean by that. What is a
8 failure of an instrument mean?

9 A. You were just describing a jaw that could
10 become misaligned. We would like to know --
11 understand why that is. So -- and if it's not
12 performing as the customer's expecting, and that
13 would be -- that would be a good example. There are
14 cables and pulleys within the instrument.
15 Occasionally those cables will break. Uhm, and
16 we'll want to evaluate that. Just a couple of
17 examples of many.

18 Q. Now, I understand that there's actual uses
19 and then there's something called reprocessing
20 cycles. Could you explain to the jury what a
21 reprocessing cycle is?

22 A. Reprocessing cycle is where that instrument
23 was unpacked, maybe used in the -- in the procedure,
24 meaning, you know, in the patient, but may not have
25 been used in the patient because it could have been

1 opened but not used. And therefore no life
2 decremented. And that instrument goes through a
3 cleaning, decontamination, and sterilization
4 process. So that would be a reprocessing site.

5 Q. Is it possible that an instrument's --
6 graspers become misaligned during their reprocessing
7 cycle?

8 A. Depending on how it was handled by the
9 personnel, potential.

10 Q. Someone could -- after single use of a
11 device, they could mishandle it and a grasper could
12 become misaligned, right? That's possible for an
13 EndoWrist?

14 A. And we would take it back and give them the
15 credit for the remaining lives on that instrument.

16 Q. How many instruments that failed before
17 their useful lives has Intuitive received back from
18 customers?

19 A. I don't know that number off the top of my
20 head. I would have to research that.

21 Q. Well, how about an estimate, be percentage,
22 be number, whatever you're comfortable with?

23 A. I wouldn't want to guess at it.

24 Q. Well, has it happened often? Is there a
25 big RMA department?

1 MS. LENT: Object to the form. Compound.

2 THE WITNESS: Can you define big RMA
3 department?

4 MR. ERWIG: Q. Well, sure. I'm just
5 trying to get a sense of how many times is it that
6 an EndoWrist lasts all the way up to its use counter
7 and how many times is it that you have to RMA an
8 instrument from a hospital?

9 A. Again, I would -- I would -- we have an RMA
10 department. Occasionally the instruments fail. On
11 the -- as a percent, I would have to research that
12 to tell you what that percent is.

13 Q. Used that word occasional. Occasionally
14 they fail. Is that less than -- less than half?

15 MS. LENT: Objection. It's vague.

16 THE WITNESS: I don't -- I don't have a bar
17 to compare the occasional.

18 MR. ERWIG: Q. Well, Intuitive rates its
19 instruments for a certain number of uses, right?

20 A. Yes.

21 Q. And it rates it for a certain number of
22 reprocessing cycles, right?

23 A. Yes.

24 Q. How many instruments fail before they use
25 up their entire reprocessing cycle?

1 A. Again, I could research that. I don't know
2 off the top of my head.

3 Q. That's something pretty important for
4 Intuitive to know, right?

5 MS. LENT: Objection.

6 THE WITNESS: It is important, and we do
7 know that.

8 MR. ERWIG: Q. Have you ever changed the
9 life of an instrument downwards based on RMAs
10 received from a customer?

11 A. Can you be more clear on that question,
12 please?

13 Q. Certain instruments, they have a use
14 counter, might have 10 uses on it, right?

15 A. Okay.

16 Q. Might have 15 reprocessing cycles, right?

17 A. Yes.

18 Q. Has Intuitive ever received enough RMA'd
19 instruments that it said, hey, look, that 10 life
20 use counter, that should really be seven; need to
21 adjust it downwards?

22 A. I don't know the situation where we lowered
23 that number of lives upon an issue.

24 Q. The instruments fail early, that would be a
25 safety concern, right?

1 A. It is, which is why we request the
2 customers to send the instrument back so we can do
3 failure analysis of that instrument.

4 Q. If it fails during a surgery, it's not
5 good, right? It's not good for the patient. It's
6 not good for the doctor. It's not good for anyone,
7 right?

8 MS. LENT: Objection.

9 THE WITNESS: We take it very seriously
10 which is why we ask the customers to return those
11 instruments so we can do the failure analysis, make
12 improvements, evaluate that relative to -- through
13 our statistical analysis of the trends on that. It
14 is all part of our quality management system.

15 MR. ERWIG: Q. Can you name a design
16 improvement that Intuitive implemented in response
17 to RMAs from its customers?

18 MS. LENT: Just want to note for the
19 record, we've gone pretty far beyond the 30(b)(6)
20 Topics. So I'm fine with you asking the questions,
21 but it's clearly in his personal capacity.

22 THE WITNESS: I can't give you a specific,
23 but we are constantly innovating, looking to make
24 those instruments more robust. Uhm, constant
25 innovation goes on with the instrument.

1 MR. ERWIG: Q. How about one specific
2 change to an EndoWrist? Can you give me that?

3 MS. LENT: Objection; vague.

4 THE WITNESS: We've done material changes,
5 as an example. Uhm, we've -- we -- we've looked at
6 different strength of -- of the wrist and improved
7 on that. Those are two examples.

8 MR. ERWIG: Q. Does Intuitive engage in
9 price discrimination between hospitals that use
10 robotics and hospitals that don't?

11 MS. LENT: Objection.

12 THE WITNESS: Can you define price
13 discrimination?

14 MR. ERWIG: Q. Well, does Intuitive's
15 pricing, when Intuitive learns that a hospital is
16 using Rebotix's services, does Intuitive charge that
17 customer more?

18 A. Charge them more --

19 MS. LENT: Objection.

20 THE WITNESS: Charge them more for what?

21 MR. ERWIG: Q. EndoWrists, for example.

22 A. No.

23 Q. Does Intuitive charge that customer less
24 for EndoWrists?

25 A. Which customer?

1 Q. Well, customer that's using Rebotix Repair.

2 Does Intuitive lower its prices on EndoWrists to
3 that customer?

4 MS. LENT: Objection; robotics repair?
5 Rebotix repair?

6 MR. ERWIG: Rebotix repair.

7 MS. LENT: With an E?

8 MR. ERWIG: Correct.

9 MS. LENT: Okay. Thank you.

10 MR. ERWIG: Q. Does it maintain the same
11 pricing for EndoWrists regardless of whether a
12 hospital is using Rebotix Repair or is not using
13 Rebotix Repair?

14 A. Yes, but, as we've discussed, they're in
15 breach of the contract. And we work through how to
16 resolve that with the customer.

17 Q. We'll talk about that in just a moment.
18 The contract that we looked at just a moment ago --
19 and I can screen share it again if that's helpful --
20 but is that contract representative of the sales
21 contracts that Intuitive and its hospital customers
22 signs?

23 MS. LENT: Objection; asked and answered.

24 THE WITNESS: Yes.

25 MR. ERWIG: Q. Let's talk about the ways

1 that Intuitive responds to hospitals that have been
2 using -- well, withdrawn.

3 Intuitive wants customers to purchase
4 replacement EndoWrists instead of servicing or
5 repairing them, right?

6 MS. LENT: Objection.

7 THE WITNESS: Per the terms of the contract
8 that we -- instruments that fail before the end of
9 the useful lives, we would want that back. Once the
10 useful lives are used, we have agreement that they
11 will dispose of those instruments or the --

12 MR. ERWIG: Q. Disposing of those
13 instruments, that doesn't include repairing or
14 refurbishing those instruments, right?

15 A. Yes.

16 MR. ERWIG: Our next exhibit is going to be
17 Exhibit 25.

18 (EXHIBIT 25 WAS MARKED FOR IDENTIFICATION.)

19 MR. ERWIG: Q. This will be Pullman
20 Regional Letter. Before I screen share this, I want
21 to get a general sense of how Intuitive responds to
22 hospitals who use Rebotix Repair services. Again,
23 that's Rebotix with an R-e.

24 What does Intuitive do when it learns that
25 a hospital is using Rebotix's services?

1 A. Uhm, usually it will start with
2 conversation that -- often at the operation --
3 operating room level, OR director, VP of bariatric
4 services. That we understand that adulterated
5 instruments are being used on the system and that,
6 for patient safety, ensuring that the system can
7 continue to operate properly, we ask them to not do
8 that. Starts with that discussion.

9 If they continue to be in breach of that
10 and continue to use adulterated instruments, we will
11 then follow with a letter to either -- to chief
12 nursing officer. It could be a -- some hospitals
13 have a chief -- patient or quality chief, and it
14 could ultimately escalate to -- we will choose to
15 say they're in violation to stop service and stop
16 supplying instrumentation.

17 Q. I'm going to screen share -- withdrawn. Is
18 that the response that Intuitive took in response to
19 each -- withdrawn.

20 Is that how Intuitive responded to each
21 hospital that it learned was using Rebotix Repair
22 services?

23 A. I don't know the answer to that. It is the
24 general process that we follow.

25 Q. By that general process, you mean that you

1 would have a conversation with the hospital and if
2 the hospital stopped using the services of Rebotix,
3 it would end there, right?

4 A. State the question again, please?

5 Q. Well, I just want to get a sense of the way
6 that the response progresses. So you mentioned the
7 first step is a conversation, right?

8 A. Correct.

9 Q. Then there would be a formal letter to the
10 hospital, right?

11 A. Yes.

12 Q. Would that formal letter generally include
13 an explanation of why Intuitive believes the
14 hospital is in breach of the contract?

15 A. It would.

16 Q. And if the hospital continued using
17 Rebotix's services after that point, then what would
18 happen?

19 A. It could end at the point in which we will
20 no longer service that system or supply
21 instrumentation for that adulterated system.

22 Q. And if Intuitive no longer services a
23 system, then that system can't be used for surgery,
24 right?

25 A. They --

1 MS. LENT: Object to the form.

2 THE WITNESS: Not necessarily.

3 MR. ERWIG: Q. What do you mean by that?

4 A. Our -- our service -- if -- our service is
5 preventive and periodic. We would say we would stop
6 servicing that system, no longer supply. But if
7 they were to continue to use instruments that were
8 adulterated from another company, they could go on
9 and continue to use that system. It's not --

10 Q. Well --

11 A. It's in their purview to do that.

12 Q. When a da Vinci robot indicates that it
13 needs service, it can't be used for a surgery,
14 right?

15 A. No.

16 Q. And when the needs service sign pops up,
17 where the hospital needs to turn to, that's
18 Intuitive, right?

19 A. If it requires service, then we would
20 provide service if they're under a service agreement
21 and not in breach of their contract.

22 Q. So to the extent that a hospital had a
23 robot that needed service but was using Rebotix's
24 services, Intuitive would no longer service that
25 hospital's da Vinci robot; is that right?

1 MS. LENT: Objection.

2 THE WITNESS: In going through that
3 resolution process with them and if we're all the
4 way through that, yes.

5 MR. ERWIG: Q. That would mean that the
6 hospital could no longer do surgeries using a robot
7 that needs service, right?

8 A. At that point, yes.

9 Q. I'm going to now screen share the exhibit
10 that I previously marked. This will be the Pullman
11 Regional letter. This will be Exhibit 25. Should
12 be in the shared folder, if you would prefer to look
13 at it there. But we can also -- we're also going to
14 just look at it under the document camera together.
15 Share my screen. I'm sorry. I shared the wrong
16 screen.

17 Do you see this on the screen in front of
18 you? I'll make it bigger in just a moment.

19 A. Yes.

20 Q. Are you aware that Intuitive sent letters
21 to hospitals that utilized refurbished EndoWrist
22 systems obtained from Rebotix?

23 A. Yes.

24 MS. LENT: Objection.

25 MR. ERWIG: Q. You see that this is a

1 letter to Scott Adams, CEO, Pullman Regional

2 Hospital. You see that?

3 A. Yes.

4 Q. And it writes, "We understand that Pullman

5 Regional Hospital is using refurbished EndoWrist

6 instruments obtained from and or modified by a third

7 party, Rebotix, for use beyond the program number of

8 uses."

9 Do you see that?

10 A. Yes.

11 Q. How can Intuitive determine when a hospital

12 is utilizing refurbished EndoWrist instruments?

13 A. We have the ability as part of the service

14 agreement. This is part of that maintenance or

15 service capability to evaluate what -- a variety of

16 different parameters on the system. And one of

17 those, as you can understand -- I don't know that

18 technical aspect of it -- but it can be determined

19 that an adulterated instrument was used on the

20 system.

21 Q. I want to turn to the second page of this

22 letter where it says, "Your contract with

23 Intuitive."

24 Do you see that?

25 A. Yes.

1 Q. And here the letter states, "We presume
2 that you are aware that in connection with Pullman
3 Regional Hospital's purchase of da Vinci surgical
4 products, Pullman Regional Hospital entered into a
5 sales license and service agreement. Using
6 instruments beyond the program number of uses is a
7 material breach of the agreement."

8 Do you see that?

9 A. Yes.

10 Q. Does Intuitive consider using EndoWrists
11 beyond the program number of uses a material breach
12 of the sales agreement with hospitals?

13 A. Yes.

14 Q. And then the section goes on to cite parts
15 of the agreement, including paragraph 8. You see
16 that?

17 A. Yes.

18 Q. Were similar letters -- well, withdrawn.

19 You mentioned that the first step when
20 Intuitive learns that a customer is using a
21 refurbished EndoWrist is a conversation, right?

22 A. Yes.

23 Q. After that point, for all customers who
24 continued using refurbished EndoWrists, did they
25 receive a letter similar to this one?

1 A. I don't know.

2 Q. Well, you mentioned that the general
3 process of escalation was conversation, a letter,
4 and then ultimately stopping service, right?

5 A. Yes.

6 Q. Now, after that initial conversation, if
7 hospitals didn't stop using Rebotix's services,
8 Intuitive would send them a letter informing them
9 about their breach of the contractual agreement,
10 right?

11 MS. LENT: Asked and answered.

12 THE WITNESS: Yes.

13 MR. ERWIG: Q. You understand you've been
14 designated by Intuitive as the 30(b)(6) witness on
15 the Topic that says Intuitive's enforcement of the
16 terms of its standard sales, license, and service
17 agreements, which is Topic 17, right?

18 A. Yes.

19 Q. You understand you've also been designated
20 on Topic 18, which is Intuitive's communications
21 concerning its customers purported non-compliance
22 with Intuitive's contracts. This Topic includes any
23 communications concerning or constituting threats
24 from Intuitive to withhold contractual maintenance
25 services. See that? Is that the case?

1 A. It's called out in the first letter we
2 looked at. I've -- I've lost the question in there.

3 Q. You understand that you're here testifying
4 on behalf of Intuitive on communications with
5 customers that Intuitive considers to be in breach
6 of the sales agreement, right?

7 A. Yes.

8 Q. Does Intuitive send this form of letter to
9 each customer who it believes is in breach of the
10 sales agreement for using Rebotix's services?

11 MS. LENT: Objection; asked and answered.

12 THE WITNESS: To my understanding, yes.

13 MR. ERWIG: Q. I want to look at another
14 part of this letter, which is the last page. I'll
15 zoom in for you. Just want to read the highlighted
16 part with you. "Should Intuitive or its personnel
17 determine, after having accepted a service call or a
18 purchase order for a service call, that the system
19 has been used with instruments refurbished or
20 modified by an unauthorized third party, Intuitive
21 may not provide service for such a system."

22 Do you see that?

23 A. Yes.

24 Q. Would Intuitive communicate this to each
25 customer that it sent a letter to that was using

1 Rebotix's services?

2 A. We would.

3 Q. Are you aware of any letters sent to a
4 hospital that used Rebotix's services that did not
5 include the statement about potentially withholding
6 service?

7 A. Not that I'm aware of.

8 Q. Are you aware of any letter sent to a
9 hospital that used Intuitive -- withdrawn.

10 Are you aware of any letter sent to a
11 hospital that used Rebotix Repair services that did
12 not include a section that Intuitive believed the
13 hospital to be in breach of its standard sales
14 agreement?

15 A. Not that I'm aware of.

16 Q. As Intuitive's 30(b)(6) witness, can you
17 identify any letter that does not include those two
18 terms?

19 MS. LENT: Objection; beyond the scope of
20 what a 30(b)(6) witness is reasonably expected to
21 do. But you can answer.

22 THE WITNESS: Not to my knowledge.

23 MR. ERWIG: Q. I'm going to stop screen
24 sharing this exhibit. Now, if a hospital repairs
25 its EndoWrists instead of buying replacements from

1 Intuitive, then Intuitive will first have a
2 conversation with that hospital, right?

3 MS. LENT: Objection; asked and answered.

4 THE WITNESS: Yes.

5 MR. ERWIG: Q. And Intuitive will write a
6 letter to that customer, right?

7 MS. LENT: Objection; asked and answered.

8 THE WITNESS: Yes.

9 MR. ERWIG: Q. And then if -- after that
10 letter the customer keeps using Rebotix's services,
11 Intuitive will stop service or void the customer's
12 warranty, right?

13 MS. LENT: Objection; compound.

14 MR. ERWIG: Q. Well, let's break it up.
15 After -- if the customer continues using --
16 withdrawn.

17 The customer continues using Rebotix's
18 services after receiving the letter, Intuitive will
19 stop servicing that customer's robot, right?

20 A. Yes.

21 Q. Another thing that Intuitive will do is it
22 will void the warranty on the customer's robot,
23 right?

24 MS. LENT: Objection.

25 THE WITNESS: What do you mean void the

1 warranty? It's associated with service. So we
2 would stop servicing. Essentially, that is the --
3 the warranty.

4 MR. ERWIG: Q. Well, what I mean by void
5 warranty is the customer would no longer have a
6 warranty on the machine such that Intuitive would be
7 willing to provide service, right?

8 A. We would no longer provide service under
9 the terms of the contract.

10 Q. That would involve -- well, withdrawn.

11 Intuitive issues a warranty with its da
12 Vinci surgical robots, right?

13 MS. LENT: Objection.

14 THE WITNESS: Yes.

15 MR. ERWIG: Q. And if a hospital
16 refurbishes EndoWrists using Rebotix, then Intuitive
17 will ultimately void that warranty, right?

18 MS. LENT: Objection.

19 THE WITNESS: Yes.

20 MR. ERWIG: I'm going to screen share our
21 next exhibit. This will be Exhibit 26.

22 (EXHIBIT 26 WAS MARKED FOR IDENTIFICATION.)

23 MR. ERWIG: Q. Handwritten notes that
24 I've taken reflecting the conversation with
25 hospitals, the letter, and then potentially stopping

1 service and voiding the warranty.

2 Do you see that, Mr. Vavoso?

3 MS. LENT: Can you please pull the page
4 down? It's -- we can't see the top.

5 MR. ERWIG: Q. I've labeled this page
6 response to hospitals. Do you see that?

7 A. I see that.

8 MS. LENT: I'm going to object to you using
9 a handwritten document again as an exhibit that
10 reflects your notes.

11 MR. ERWIG: Q. To be clear, this is a
12 response to hospitals using Rebotix, just so that's
13 clear, right?

14 A. What was the question?

15 Q. Does this reflect the steps that Intuitive
16 takes in response to hospitals who are using Rebotix
17 Repair services?

18 MS. LENT: Same objection to the document.

19 THE WITNESS: In general, it outlines the
20 steps.

21 MR. ERWIG: We'll mark this as Exhibit 26.

22 MS. LENT: Objection to marking your
23 handwritten notes as a document in the deposition.

24 MR. ERWIG: Q. Stop the screen share.
25 Now, the letters that Intuitive sent to its

1 customers, those were effective in stopping --
2 withdrawn.

3 The letters that Intuitive sent to
4 hospitals that used Rebotix's Repair services, those
5 were effective in getting hospitals to stop using
6 Rebotix's services, right?

7 MS. LENT: Objection.

8 THE WITNESS: When you say effective,
9 meaning that customers followed the contract as we
10 agreed upon?

11 MR. ERWIG: Q. Well, what I mean by
12 effective is customers stopped using Rebotix's
13 services, right?

14 MS. LENT: Objection.

15 THE WITNESS: It can -- in many of those
16 instances, yes, that they abided by the terms of the
17 original contract.

18 MR. ERWIG: Q. Is there any instance that
19 you can identify, as Intuitive's 30(b)(6) witness,
20 where a hospital continued using Rebotix's services
21 after receiving these letters from Intuitive?

22 A. Not -- not at this time.

23 Q. Intuitive wanted hospitals to stop using
24 Rebotix's services, right?

25 MS. LENT: Objection.

1 THE WITNESS: We wanted them to follow the
2 terms of the agreement that we had with them as to
3 operation of the robotics system.

4 MR. ERWIG: Q. The terms of that
5 agreement, the way you read them, that meant that
6 you wanted the hospitals to stop using Rebotix's
7 services, right?

8 MS. LENT: Objection.

9 THE WITNESS: Again, we wanted to have them
10 follow terms of the agreement not to adulterate
11 instruments or any portion of the system. That was
12 the intent.

13 MR. ERWIG: Q. Ultimately, if a hospital
14 uses EndoWrists beyond their maximum use
15 restrictions, by repairing this with Rebotix,
16 Intuitive would render that hospital's da Vinci
17 robot non-useable, true?

18 MS. LENT: Objection.

19 THE WITNESS: Only to the point of -- the
20 system fails and it's not going to be repaired, or
21 that would be the situation.

22 MR. ERWIG: Q. The system reads a needs
23 service message and Intuitive won't service it, that
24 system can't be used for surgeries, right?

25 A. That adulterated system would not be used,

1 yeah, after that point.

2 MR. ERWIG: Let's go off the record, and
3 we'll take a break.

4 VIDEOGRAPHER: At the end of Media 3 at
5 3:31.

6 (The deposition was in recess from 3:31 to
7 3:41.)

8 VIDEOGRAPHER: This is the beginning of
9 Media No. 4 in the deposition of Glenn Vavoso. We
10 are back on the record at 3:43.

11 MR. ERWIG: Q. Now, Mr. Vavoso, if an
12 Intuitive da Vinci robot can't be used for surgery,
13 what else can it be used for?

14 A. It's used for surgery.

15 Q. So if a da Vinci robot says needs service
16 and Intuitive doesn't provide service, what can a
17 hospital use that robot for?

18 A. They wouldn't be able to use it.

19 Q. I mean, they could -- they wouldn't be able
20 to use it for surgery certainly, right?

21 A. Correct. I suppose it could be used for
22 training.

23 Q. When you say training, it won't even -- the
24 instruments won't even operate if it says needs
25 service, right?

1 A. Right. Depends on what the service issue
2 is.

3 Q. Well, if the robot reads needs service,
4 what situations can a surgeon continue to do
5 surgeries with that robot?

6 A. Well, the system can alert our technicians
7 that there's a -- there's an issue. It may not be
8 one that stops the robot. It could be predictive in
9 that, if it continues, it will lead to it not
10 functioning. Usually that triggers a service
11 engineer to go out and then make a repair, perform
12 some corrective maintenance.

13 Q. But you can't use a robot for actual
14 surgery on a patient when it says needs service,
15 right?

16 MS. LENT: Objection; misstates the
17 testimony.

18 THE WITNESS: Again, it depends on the
19 condition. There's all different levels of service
20 alerts that you might get, not everyone means that
21 the system doesn't operate.

22 MR. ERWIG: Q. At some point, when
23 Intuitive doesn't provide service to a robot, that
24 robot can no longer be used for surgeries, true?

25 A. Eventually, it might reach a condition

1 where it would not operate.

2 Q. Well, it certainly reaches the condition
3 where it's not safe to be used for surgeries, right?

4 MS. LENT: Object to the form.

5 THE WITNESS: Depending on the service
6 level of alert, it may not be used for surgery nor
7 would you want it to be used for surgery.

8 MR. ERWIG: Q. If it can't be used for
9 surgeries and it doesn't operate, what else can a
10 hospital do with it?

11 MS. LENT: Object to the form. Asked and
12 answered.

13 THE WITNESS: I -- I don't know what else
14 they would use it for.

15 MR. ERWIG: Q. It's got four arms, right?

16 A. It has four arms, yes.

17 Q. You could extend those arms out and hang
18 coats on it, for example, right?

19 MS. LENT: Object to the form.

20 THE WITNESS: You could hang items on it,
21 yes.

22 MR. ERWIG: Q. Use it to prop open a
23 door?

24 A. It's fairly large. But you could prop open
25 a door. It might block the doorway.

1 Q. Could you use to it hold a stack of papers
2 in place?

3 MS. LENT: Object to the form.

4 THE WITNESS: Can you be more specific?

5 MR. ERWIG: Q. Sure. If you had some
6 papers on the ground that you didn't want a nearby
7 fan to blow away, you could position the robot on
8 top of those papers and then those papers wouldn't
9 be blown away by the fan, right?

10 MS. LENT: Object.

11 THE WITNESS: I'm not sure how you get it
12 on top of the papers.

13 MR. ERWIG: Q. Is it too heavy to do
14 that?

15 A. Fairly large.

16 Q. Surgeons move it around the operating lab
17 though, right?

18 A. They do.

19 MS. LENT: Objection.

20 MR. ERWIG: Q. You could move it over
21 some papers on the ground and hold them there,
22 right?

23 MS. LENT: Objection; asked and answered.

24 THE WITNESS: Yes.

25 MR. ERWIG: Q. I want to talk a little

1 bit more about the EndoWrists. EndoWrists have a
2 lot of similarities to traditional laparoscopic
3 instruments, right?

4 MS. LENT: Objection.

5 THE WITNESS: Can you be specific on
6 similarities?

7 MR. ERWIG: Q. Well, sure. You're
8 familiar with traditional instruments used in
9 laparoscopic surgery, right, like forceps or
10 scissors or things like that, right?

11 A. Yes.

12 Q. And you're aware that hospitals in the
13 United States repair, sharpen, service those
14 traditional instruments as they become dull or
15 become misaligned, right?

16 A. I understand that practice goes on, yes.

17 Q. And they do that so that they don't have to
18 buy a lot of additional laparoscopic instruments,
19 right? It's so they can keep using the instruments
20 that they've already purchased, right?

21 MS. LENT: Objection.

22 THE WITNESS: I don't know their exact
23 reasons why they do it. Might be a variety of
24 reasons, but that would be speculating.

25 MR. ERWIG: Q. Well, one reason certainly

1 would be that you could keep using an existing
2 instrument and you wouldn't need to buy a new
3 instrument when scissors became dull, for example,
4 right?

5 MS. LENT: Objection.

6 THE WITNESS: Okay. That could be one
7 reason.

8 MR. ERWIG: Q. And if a grasper, for
9 example, became misaligned, that grasper could be
10 realigned. The instrument could continue to be used
11 in surgery for -- a traditional laparoscopic
12 instrument, right?

13 MS. LENT: Objection.

14 THE WITNESS: I suppose it could be.

15 MR. ERWIG: Q. And you're aware that
16 that -- that practice happens at hospitals around
17 the United States, right?

18 A. I'm aware of that practice.

19 Q. Now, I just want to focus in on one
20 particular type of laparoscopic instrument, which is
21 the grasper. So it would be two -- two grasping --
22 well, can you describe for me what a grasper looks
23 like?

24 A. A variety of different graspers, but at the
25 basic level, it is -- looks like a pair of forceps

1 at the end of the instrument. You can open and
2 close. It will have knurled ridges so that you can
3 grasp tissue. There are traumatic tissue graspers
4 and atraumatic tissue graspers. They can be
5 pointed. They can be blunt.

6 Q. So at a very simple level, it's an
7 instrument that has sort of two prongs on it that
8 you can use to grasp things, right?

9 A. Yes.

10 Q. And the tips of those instruments, they're
11 similar between traditional instruments and
12 EndoWrists, right?

13 MS. LENT: Objection.

14 THE WITNESS: Similar in that they grasp.
15 Similar in that they have essentially two -- two
16 pedals, but different in the flex, the range,
17 different in that ours are attached to a robotic
18 system that has to know in 3D space exactly where
19 the tip of that grasper is. The system has to
20 understand exactly how the grasper is aligned. The
21 grasper has to know whether it's fully closed or
22 fully open. The system has to sense all of that. A
23 laparoscopic instrument does not.

24 MR. ERWIG: Q. So there's some
25 differences between a -- an EndoWrist and a

1 traditional laparoscopic instrument, right?

2 A. Yes.

3 Q. There's also some similarities, right?

4 Both the traditional laparoscopic instrument and the
5 EndoWrist can have some misalignment in the forceps,
6 right?

7 A. You could. The repercussions are greater
8 with the robotic instrument than the consequences of
9 the misaligned grasper in a laparoscopic instrument.

10 Q. For the traditional laparoscopic
11 instrument, the misaligned forceps, those can be
12 realigned, right?

13 A. I don't know. I understand the practice
14 goes on, but I -- I'm not familiar with it.

15 Q. Has Intuitive tested whether it's possible
16 to safely repair or realign the forceps on an
17 EndoWrist?

18 A. Not that I'm aware of.

19 MR. ERWIG: And I just want to make this a
20 little bit more concrete. So I'm going to screen
21 share our next exhibit. So it will be Exhibit 27.

22 (EXHIBIT 27 WAS MARKED FOR IDENTIFICATION.)

23 MR. ERWIG: Q. I'm going to screen share
24 with you. Can you see this on the screen in front
25 of you?

1 A. Yes.

2 Q. Can you tell me anything you can -- what --
3 what do these appear to be pictures of?

4 A. Graspers.

5 Q. And it looks like there's seven pictures of
6 graspers on this page; is that right?

7 A. Can you zoom out?

8 Q. I can't, unfortunately. This is the
9 furthest that it goes. But I can show you from the
10 top to the bottom. So there's two, four, six, and
11 then seven down here. Do you see that? And that's
12 the extent of the page.

13 A. Okay. I see seven.

14 MS. LENT: Can you please load this to the
15 share file?

16 MR. ERWIG: Yeah, I'll upload it -- I can
17 scan it in as soon as it's presented.

18 MS. LENT: It would be great if you could
19 put documents in when you are using them so that we
20 can have access to them. That's the reason for the
21 share file. Thanks.

22 MR. ERWIG: Q. There's a little bit of
23 delay on the scanner, so I can't just scan it in
24 live. But I'll get it scanned in as soon --

25 MS. LENT: I understand. It's just that we

1 have a share file, and there's a procedure for using
2 it so that we have access to the documents as if we
3 were in a regular deposition and we haven't
4 necessarily had that. So I'd like you to try and do
5 that simultaneously with when you're introducing a
6 document, please.

7 MR. ERWIG: Q. Sure. Would you like me
8 to scan this one in before I ask some questions
9 about it?

10 MS. LENT: Sure. That would be great.
11 Thank you.

12 MR. ERWIG: Okay. Let's go off the record.

13 MS. LENT: I don't think we should be going
14 off the record if you're going to introduce
15 documents.

16 VIDEOGRAPHER: Off -- okay. We're still on
17 the record.

18 MR. ERWIG: Well --

19 VIDEOGRAPHER: I need both parties to
20 agree.

21 MR. ERWIG: Takes some -- takes some time
22 to scan documents in. So if you would like it now,
23 I'm happy to go scan it in, or we can wait until the
24 next break. It's this one page.

25 MS. LENT: I'll skip this -- I'll skip it

1 for this one, but for any more I would like it to be
2 scanned in while we're asking questions, please.

3 MR. ERWIG: Sounds good. To the extent
4 that I can do that, I'll accommodate.

5 VIDEOGRAPHER: All right. We're still on
6 the record.

7 MR. ERWIG: Q. Now returning back to --
8 I'm going to mark this -- what -- these are -- you
9 mentioned these are pictures of graspers. Is that
10 what you referred to them as?

11 A. Variety of graspers.

12 Q. That will be Exhibit 27, will be a variety
13 of graspers.

14 MS. LENT: Object to writing on exhibits
15 again.

16 MR. ERWIG: Q. Now, Mr. Vavoso, can you
17 identify all of the EndoWrists that appear on
18 Exhibit 27?

19 A. It's hard to clearly make out the pictures.
20 I'd like to see the document.

21 Q. Sure. Would you like me to zoom in?

22 A. Sure. That doesn't look like an EndoWrist.
23 Doesn't it look like an EndoWrist. No. The quality
24 of the picture is poor, so it's a little difficult
25 to tell there.

1 Q. So that ones a -- picture quality not
2 great?

3 A. Yes. Not an EndoWrist. Not an EndoWrist.
4 It's really hard to tell. That one could be.

5 MS. LENT: I'm going to object again to
6 this Exhibit to the extent it's not clear enough to
7 answer the questions that you're posing to the
8 witness.

9 MR. ERWIG: Q. Well, Mr. Vavoso, there
10 were some where you said the pictures were, you
11 know, a little hard to read. And I've indicated
12 that on these exhibits. I just want to indicate, so
13 we're clear, that these two are the EndoWrist that
14 appear in this exhibit. I'll mark this as
15 Exhibit 27, and we'll get it scanned in at the
16 break.

17 MS. LENT: Are we supposed to take your
18 word for that? Is that the testimony you're giving?

19 MR. ERWIG: Correct. I can represent to
20 you that those are pictures of EndoWrists, Intuitive
21 EndoWrists.

22 MS. LENT: I object to the document and
23 your characterization of it. I think it's entirely
24 inappropriate.

25 MR. ERWIG: Q. I'll stop screen sharing.

1 I want to talk to you a little bit about what
2 constitutes failure in testing for EndoWrists. Do
3 you have any familiarity with that, Mr. Vavoso?

4 MS. LENT: Objection; vague.

5 THE WITNESS: Can you restate the question?

6 MR. ERWIG: Q. Well, sure. There's some
7 testing that Intuitive does of its EndoWrists,
8 right?

9 A. We do.

10 Q. And there's certain situations where
11 Intuitive determines that an EndoWrist has reached
12 failure, right?

13 MS. LENT: Objection; vague.

14 THE WITNESS: Not clear on the question.
15 Has reached failure? What does that mean?

16 MR. ERWIG: Q. Well, there's certain
17 instances where Intuitive deems that the EndoWrist
18 is not -- is no longer safe to use, right?

19 A. Is this -- is this an instrument that is
20 returned from the customer?

21 Q. I'm just talking about Intuitive's internal
22 testing of EndoWrists, when it's testing a device.
23 So I want to get a sense of how that testing
24 operates.

25 A. Okay. And what was the question again?

1 Q. Do you have a general sense of what it
2 means for a -- an EndoWrist to fail a specific life
3 cycle?

4 A. No.

5 Q. If an EndoWrists graspers become
6 misaligned, for example, would that be a failure of
7 that EndoWrist?

8 A. In what situation? You just described a
9 situation of life testing an instrument. In that
10 scenario or --

11 Q. Well, Intuitive conducts some testing on
12 its EndoWrist before it ships them to customers,
13 right?

14 MS. LENT: Objection. This is outside the
15 scope of the 30(b)(6). You're asking him in his
16 personal capacity.

17 THE WITNESS: There is testing that goes on
18 and all kinds of specifications of the instruments
19 have to be met before that is shipped to -- to a
20 customer.

21 MR. ERWIG: Q. What specific companies
22 does Intuitive compete with for sales of EndoWrist
23 devices in the United States?

24 MS. LENT: Objection.

25 THE WITNESS: Can you repeat the question,

1 please?

2 MR. ERWIG: Q. What companies does
3 Intuitive compete with -- the market for EndoWrist
4 sales?

5 MS. LENT: Objection. Objection.

6 THE WITNESS: Intuitive is the supplier of
7 EndoWrist instruments.

8 MR. ERWIG: Q. That means it has no
9 competitors in the EndoWrist market, right?

10 MS. LENT: Objection.

11 THE WITNESS: What is the EndoWrist market?

12 MR. ERWIG: Q. Well, customer wants to
13 buy an EndoWrist, they have one option. It's
14 Intuitive, right?

15 A. They would buy from us, yes.

16 Q. Can't go buy an EndoWrist from
17 TransEnterix, right?

18 A. Correct.

19 Q. Can't go buy one from Medtronic?

20 A. Correct.

21 Q. They have to purchase their EndoWrists from
22 Intuitive Surgical, right?

23 A. Yes.

24 Q. So Intuitive has a hundred percent of that
25 market, right?

1 MS. LENT: Objection.

2 THE WITNESS: Of what market?

3 MR. ERWIG: Q. The market for EndoWrists?

4 MS. LENT: Objection; calls for a legal
5 conclusion.

6 MR. ERWIG: Q. I need an answer,
7 Mr. Vavoso?

8 A. Can you --

9 MS. LENT: I --

10 THE WITNESS: -- restate the question,
11 please?

12 MR. ERWIG: Q. Intuitive has 100 percent
13 of the market for EndoWrists, true?

14 MS. LENT: Objection.

15 THE WITNESS: We make and manufacture
16 EndoWrist instruments. Nobody else does. And we
17 supply those to customers.

18 MR. ERWIG: Q. Nobody else does that
19 either, right?

20 A. Nobody else manufactures unadulterated
21 EndoWrist instruments, right.

22 Q. No one else sells unadulterated --
23 withdrawn. No one else sells EndoWrists to
24 customers, right -- withdrawn.

25 Let me ask a better question. Intuitive is

1 the only company that manufactures EndoWrists,
2 right?

3 A. Yes.

4 Q. Intuitive is the only company that sells
5 EndoWrists, right?

6 A. Yes.

7 Q. The only instruments that are capable of
8 being used with a da Vinci surgical robot, those are
9 EndoWrists, right?

10 A. Yes.

11 MR. ERWIG: Screen share our next exhibit.
12 This will be Exhibit 28.

13 (EXHIBIT 28 WAS MARKED FOR IDENTIFICATION.)

14 MR. ERWIG: Q. This will be in Folder 4.
15 This will be 4/20/17 Vavoso to Tourand and
16 Boeschenstein.

17 You see this on the screen in front of you,
18 Mr. Vavoso?

19 A. I do.

20 Q. Want to draw your attention to the bottom
21 e-mail on this first page. Does that appear to be
22 -- withdrawn.

23 Do you recognize that e-mail?

24 A. I -- I mean, clearly, I wrote it. It's
25 been a while. I don't particularly remember the

1 e-mail, but --

2 Q. Does this appear to be an e-mail from
3 yourself to Todd Tourand and Curt Boeschstein. Am
4 I saying that right?

5 A. Boeschstein, yep.

6 Q. And the subject is re the offering
7 refurbished. Do you see that?

8 A. I see that.

9 Q. What is the offering refurbished?

10 A. I'm just reading the e-mail.

11 Q. That's fine. Take your time. You can
12 scroll down, if you need me too as well. It should
13 be in the share file, though.

14 A. Scroll down. Scroll down. And scroll back
15 to the top. Top of the e-mail that I sent. I think
16 this is looking at a process of -- for European
17 markets where if you collected disposed instruments,
18 were there components that could be reclaimed in
19 that process.

20 Q. I want to ask you about this e-mail.
21 There's an e-mail from Todd Tourand to yourself and
22 Curt with the subject re the offering refurbished
23 sent on the April 10th, 2017.

24 Do you see that?

25 A. I do.

1 Q. Todd writes, "Glenn, per our conversations
2 last week, attached is the updated deck for
3 remanufactured instruments."

4 Do you see that?

5 A. Yes.

6 Q. And then you respond, "Todd, deck slash
7 research is coming along. In reviewing slide 5, I'm
8 not clear on the discount levels."

9 Do you see that?

10 A. Yes.

11 Q. Did you review the PowerPoint that Todd
12 Tourand sent you as part of this e-mail chain?

13 A. I don't recall it. Was there -- was there
14 a PowerPoint?

15 Q. We're about to go to the attachment. I
16 just want to get a sense of whether your statement
17 that, you know, you write here -- withdrawn.

18 You write, "In reviewing slide 5, I'm not
19 clear on the discount levels."

20 A. It's what it states. I'd have to look at
21 the PowerPoint -- understand.

22 Q. Does that seem to indicate that you looked
23 at an attached PowerPoint and reviewed at least
24 slide 5?

25 A. It does.

1 MR. ERWIG: Stop screen sharing. This
2 exhibit -- I believe I marked it, but if not, it's
3 Exhibit 28.

4 Next Exhibit will be 4/20/17 Attach to
5 Vavoso to Tourand.

6 (EXHIBIT 29 WAS MARKED FOR IDENTIFICATION.)

7 MR. ERWIG: Q. See this on the screen in
8 front of you, Mr. Vavoso?

9 A. Yes.

10 Q. Do you recognize this?

11 A. I -- can the -- context of it, the
12 PowerPoint, kind of just look through, if you can do
13 that.

14 Q. Sure. Slide 2 is a slide titled instrument
15 refurbishment program benefits. Do you see that?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Instrument remanufactured positioning, do
20 you see that?

21 A. Yes.

22 Q. Does seeing these first few slides refresh
23 your recollection on whether you reviewed this
24 PowerPoint?

25 A. Likely reviewed, yes.

1 Q. I'm going to just talk to you about some
2 parts of this. Starting with slide 2, which is
3 labeled instrument refurbishment program benefits.

4 Do you see that?

5 A. Yes.

6 Q. And the description is, "Reclaim expired
7 instruments for the purpose of remanufacturing and
8 recertifying to original performance
9 specifications."

10 Do you see that?

11 A. Yes.

12 MS. LENT: Alexander, can we get this in
13 the share file? It's not there yet.

14 MR. ERWIG: I think if you reload it, it
15 should be there.

16 MS. LENT: I've been reloading
17 consistently. Still not there.

18 MR. ERWIG: It's a slightly larger document
19 so it may just be taking a second to upload. I'm
20 happy to wait.

21 MS. LENT: Okay. I think it's there now.
22 It's just loading.

23 MR. ERWIG: Great. I can wait until you
24 have it pulled up, if you want.

25 MS. LENT: Thank you. Okay. I got it.

1 Thanks.

2 MR. ERWIG: Q. Great. No problem. Now,

3 do you see, Mr. Vavoso, that here -- withdrawn.

4 There's a section title description -- well,

5 withdrawn. We just went over that. Can we --

6 withdrawn.

7 There's a section on this slide labeled

8 clinical performance. Do you see that?

9 A. Yes.

10 Q. And under that it reads equivalent

11 performance. Do you see that?

12 A. Yes.

13 Q. And 10 lives per instrument. Do you see

14 that?

15 A. Yes.

16 Q. And equivalent cleaning and sterilization

17 process. Do you see that?

18 A. Yes.

19 Q. Was it your understanding that refurbished

20 instruments would have equivalent performance to new

21 EndoWrists?

22 A. Based on this PowerPoint, the thought would

23 be that if you have a refurbished instrument that

24 you would sell, it would be at the same

25 specification level of a newly built instrument.

1 Q. And that's -- that means equivalent
2 performance, right? So it can -- a remanufactured
3 instrument could perform at the exact same level as
4 a new instrument, right?

5 MS. LENT: Objection.

6 THE WITNESS: When integrating with the
7 system, that it would perform equivalently.

8 MR. ERWIG: Q. And looking at slide 3,
9 there's a section on this slide labeled brand
10 position. Do you see that?

11 A. Yes.

12 Q. First bullet reads, "EndoWrist RM,
13 remanufactured, will be positioned as equal to
14 EndoWrist, equal number of lives, performance, and
15 reprocessing."

16 Do you see that?

17 A. Yes.

18 Q. Was it your understanding that
19 remanufactured EndoWrists would be able to deliver
20 an equal number of lives, performance, and
21 reprocessing as new EndoWrists?

22 A. That would be the goal. This was a
23 scenario plan with a goal requirement.

24 Q. Actually, I want to ask you about that. I
25 can stop screen sharing this exhibit. What sorts of

1 testing did Intuitive conduct to determine whether
2 this refurbishment project was feasible?

3 A. I wasn't involved in the testing criteria.

4 Q. Well, when you received the slide deck --
5 withdrawn.

6 You reviewed that slide deck, right?

7 A. Yes.

8 Q. And what was your understanding of why
9 Intuitive was exploring a refurbished EndoWrist
10 program?

11 A. One of the key reasons were -- customers
12 were asking about -- particularly in Europe, because
13 there were requirements in order to operate in the
14 European Union that you have some green initiatives.
15 And are there ways that we could take some of that
16 component, reclaim, and build to original
17 specification in that, which is in part why that
18 slide had sort of a gray eco symbol to it.

19 Q. Would Intuitive engage in a green eco
20 program if it didn't believe that the remanufactured
21 and refurbished EndoWrists could operate at the same
22 level of safety as new EndoWrists?

23 A. We would want whatever instrument goes out
24 to be equivalent performance to the instrument that
25 was -- that would be equivalent to a newly built

1 instrument.

2 Q. And after you -- withdrawn.

3 After you received this slide deck, did you
4 ever receive any indication from anyone at Intuitive
5 that it was simply not possible to offer refurbished
6 instruments that would offer the same level of
7 performance as new EndoWrists?

8 A. I don't recall that.

9 Q. Do you have any memory of anyone saying,
10 hey, look, this refurbishment program, it's -- can't
11 do it. Can't make EndoWrists that are the same as
12 new EndoWrists that are also refurbished.

13 MS. LENT: Objection.

14 THE WITNESS: I don't recall that.

15 MR. ERWIG: Q. Were there any studies
16 that Intuitive conducted comparing the performance
17 of refurbished versus new EndoWrists?

18 A. I'm sure there were. I don't -- I don't
19 recall seeing those specific -- that specific
20 research.

21 Q. What -- the process of refurbishing and --
22 withdrawn.

23 What does the process of refurbishing an
24 instrument look like?

25 A. Beyond my technical capability.

1 Q. It's okay. Do you have a general sense
2 of -- is it trying to put together an EndoWrist from
3 a lot of discarded parts? Is it taking an EndoWrist
4 that's slightly damaged and changing it? Kind of
5 any sort of general sense about that, or is that
6 just out of your technical scope?

7 MS. LENT: Objection.

8 THE WITNESS: Out of my -- out of my
9 technical scope.

10 MR. ERWIG: Q. No problem. Have you ever
11 heard of Project Dragon?

12 A. Don't recall hearing Project Dragon.

13 MR. ERWIG: I'm going to screen share our
14 next exhibit. This will be Exhibit 30. This will
15 be 6/26/17 Okafor to Scoville and Vavoso.

16 (EXHIBIT 30 WAS MARKED FOR IDENTIFICATION.)

17 MR. ERWIG: Q. Screen share. You see
18 this on the screen in front of you?

19 A. I do.

20 Q. Who is Cyprian Okafor?

21 A. One of our attorneys.

22 Q. Does this appear -- withdrawn.

23 Does this appear to be an e-mail from
24 Cyprian Okafor to Katie Scoville and yourself?

25 A. To Katie, cc'ing me.

1 MS. LENT: Alexander, as I'm looking at
2 this document here, I think that this contains at
3 least some attorney-client privileged information.
4 And I'm going to ask you to not inquire about it
5 anymore. We'll take a close look at it and
6 reproduce it with redactions, if necessary. But on
7 its face, this is -- there is at least some
8 privileged information in here.

9 MR. ERWIG: Well, I'm not sure it's
10 entirely appropriate to halt a line of questioning
11 in a deposition based on a document that you
12 produced.

13 MS. LENT: I absolutely think it's entirely
14 appropriate to halt a line of questioning on
15 document that was -- a privileged document that was
16 inadvertently produced. And, in fact, that's the
17 way an ESI protocol works. When there's a
18 privileged document and you inadvertently produce
19 it, the other side respects that and allows you to
20 take a closer look at it.

21 MR. ERWIG: Okay. I'll stop asking
22 questions about this document and reserve our right
23 to re-open the deposition to ask Mr. Vavoso about
24 this document.

25 Ms. Lent, I've looked through the

1 attachment to that e-mail, and it does not, to me,
2 appear to reflect any attorney-client privileged
3 communication. If you want me to refrain from
4 asking about it now, I will. But I will reserve our
5 right to reopen Mr. Vavoso's deposition to ask him
6 about that document.

7 MS. LENT: So I can't make that
8 determination right now on the fly. I will note for
9 the record, Alexander, that the -- despite the fact
10 that we inadvertently produced this document, the
11 subject line has three asterisks and says
12 confidential attorney-client privileged
13 communication, which is a tip to you that this is a
14 privileged document that you're attempting to use in
15 a deposition.

16 Uhm, so, you know, we're going to take a
17 closer look at it, including an attachment to it.
18 But I'm not going to let you ask questions about it
19 in the deposition.

20 MR. ERWIG: So, just to be clear, you're
21 not going to let me ask questions about an
22 attachment to that document that's titled dragon
23 marketing background; is that right?

24 MS. LENT: That's correct. The document
25 that's entitled dragon marketing background, and

1 then it says attorney-client privileged
2 communication. Uhm, I'm telling you that we need to
3 take a closer look. Clearly, this is at least
4 partially privileged and on the fly, in this
5 deposition, I'm not going to make privilege calls to
6 let you ask questions.

7 MR. ERWIG: Well, the attachment certainly
8 doesn't include a label about --

9 MS. LENT: Yeah, I'm not going to let you
10 ask questions, so we don't have to keep arguing
11 about it. Okay. I understand you're reserving your
12 rights. And it's your obligation pursuant to our
13 agreement with respect to producing documents that
14 you stop asking questions.

15 MR. ERWIG: Sure. We'll just note that --
16 we'll reserve our rights to re-open the deposition
17 and add the specific attachments or any portions of
18 this e-mail. So I just want to make sure that's the
19 way you want to go. That's totally fine.

20 MS. LENT: You may reserve your rights to
21 ask questions about any portions of this document
22 and its attachment that we determine are not
23 privileged.

24 MR. ERWIG: Okay.

25 MS. LENT: So let's move on.

1 MR. ERWIG: Q. Is Intuitive aware of any
2 -- withdrawn.

3 Are you, Mr. Vavoso, aware of any medical
4 opinions that EndoWrists are only safe to be used
5 for 10 to 12 uses?

6 MS. LENT: Object to the form.

7 THE WITNESS: There are medical opinions?

8 MR. ERWIG: Q. Correct.

9 A. Can you define medical opinion?

10 Q. Well, for example, is there a study that
11 says there's no way to use EndoWrists safely after
12 10 to 12 uses, for example?

13 A. Not aware of a study, no.

14 Q. I want to ask you about the TransEnterix
15 Senhance. Are you familiar with any usage counter
16 on the TransEnterix Senhance robot?

17 A. No.

18 Q. Can you describe for me the instruments
19 that are used on the TransEnterix Senhance?

20 A. I don't know all the instruments, but they
21 have a variety of cutting tools like scissors, Potts
22 scissors or graspers, forceps, amongst probably more
23 than that. But those are the ones that I do recall
24 right now.

25 Q. So TransEnterix's Senhance robot has

1 instruments including graspers, forceps, and
2 scissors, right?

3 A. I believe so.

4 Q. I'm sorry. I didn't quite get that answer.

5 A. I believe so, yes.

6 Q. Those -- none of those TransEnterix
7 instruments have use counters on them; is that
8 right?

9 A. I don't believe so.

10 Q. You don't believe that they have use
11 counters? Just want to be clear.

12 A. Yes.

13 Q. So to your knowledge, the TransEnterix
14 Senhance robot, its instruments do not have use
15 counters on them, correct?

16 MS. LENT: Objection; asked and answered.

17 THE WITNESS: Yes.

18 MR. ERWIG: Q. It's your understanding
19 that the TransEnterix Senhance robot and its
20 assorted instruments received FDA approval with no
21 use counter; is that right?

22 A. Yes.

23 Q. Now, how about the Medtronics Flex? Are
24 you aware of any use counter on the Medtronics Flex?

25 A. Medrobotics.

1 Q. I'm sorry. Yes. The Medrobotics Flex,
2 yes.

3 A. I'm not aware of any use counter.

4 Q. What sorts of instruments are used with the
5 Medrobotics Flex?

6 A. I'm less familiar with the instruments on
7 Medrobotics Flex. So it's hard for me to answer.

8 Q. The Flex received FDA approval without any
9 use counters on it, right?

10 A. That's my understanding, yes.

11 Q. Has Intuitive, at any point, done any
12 research on the safety of Rebotix's remanufactured
13 -- withdrawn.

14 Has Intuitive, at any point, done any
15 research on the quality of EndoWrists repaired by
16 Rebotix Repair?

17 A. I don't know.

18 Q. Are you aware of any?

19 A. I'm not aware of any. I don't know if it's
20 been done or not done.

21 MR. ERWIG: Let's go off the record, and
22 we'll take a short break.

23 THE WITNESS: Okay.

24 VIDEOGRAPHER: Off record. The time is
25 4:28.

1 (The deposition was in recess from 4:27 to
2 4:39.)

3 VIDEOGRAPHER: We're back on the record.
4 The time is 4:40.

5 MR. ERWIG: Q. Mr. Vavoso, what is an
6 extended life EndoWrist?

7 A. It is a instrument that, after evaluating
8 the capability of that number of innovations around
9 the instrument, we're able to extend the number of
10 lives and the use of that instrument.

11 Q. And how do you determine which instrument
12 will have -- withdrawn.

13 How do you determine the increase in the
14 number of lives for a given EndoWrist?

15 A. It's really more of an engineering
16 question. But there's work done by the engineering
17 and design team looking at all kinds of previous
18 performance that we talked about earlier.

19 Innovations made, which we had talked about
20 iterations of those issues, to where you feel like
21 it will continue to operate under the -- operate
22 within specification for the full use of those
23 lives.

24 And there was a -- there are a number of
25 instruments that were able, through that process,

1 have the number of lives increased for those issues.

2 Q. Does marketing play any role in the process
3 of setting the number of uses for extended use
4 EndoWrist instruments?

5 MS. LENT: Objection.

6 THE WITNESS: It play -- can you be more
7 specific on what role?

8 MR. ERWIG: Q. Well, sure. When
9 Intuitive makes a determination as to how many
10 additional lives an extended use instrument has, is
11 that decision solely made by engineering, or does
12 marketing play a role in determining where that
13 extended use instrument's life counter should be
14 set?

15 A. It would be based on engineering and
16 statistical analysis in the improvements that are
17 made on the instrument. So an engineering
18 determination.

19 Q. Is it your testimony that it's exclusively
20 based on engineering determinations?

21 A. It's my understanding, yes.

22 Q. So it's your testimony that Intuitive only
23 considers the life of the instrument and doesn't
24 consider any sort of marketing or revenue split with
25 customers or anything like that?

1 MS. LENT: Object to the form.

2 THE WITNESS: Not -- ask the question
3 again, please?

4 MR. ERWIG: Q. Well, sure. What I'm
5 trying to understand is -- maybe we can back up and
6 talk about how the extended use instruments are
7 tested.

8 How is the determination made as to what
9 number of extended uses is appropriate for an
10 instrument by Intuitive?

11 A. Given my understanding, is that the
12 specifications as to which that instrument should
13 operate, uhm, are -- then determine the number of
14 lives. And over time, through data analysis,
15 looking at RMA returns, looking at performance in
16 real world coupled with the innovations and the
17 iterations that go on over the years of that
18 instrument, it can then be evaluated to say those
19 specifications can be met with an increased number
20 of lives.

21 Q. Did Intuitive raise the prices of extended
22 use EndoWrists relative to non-extended use
23 EndoWrists?

24 A. On a per procedure basis?

25 Q. Well, on just a per EndoWrist basis?

1 A. Well, the instrument may cost more because
2 the life is priced at a different level.

3 Q. So when a customer is considering
4 purchasing an extended use EndoWrist versus a
5 regular EndoWrist, extended use EndoWrist has a
6 higher sticker price on it, right?

7 MS. LENT: Objection.

8 THE WITNESS: Not -- not on a per procedure
9 basis.

10 MR. ERWIG: Q. I understand you're saying
11 per procedure basis, but I want to get a sense of
12 just the -- the up-front pricing to a hospital.
13 Hospitals pay for EndoWrists up front from
14 Intuitive, right?

15 A. They do.

16 Q. And so if a customer is purchasing an
17 EndoWrist -- well, give me -- do you have a sense of
18 what a normal EndoWrist might cost?

19 MS. LENT: Object to the form. And I'll
20 note that this is not within the topics that
21 Mr. Vavoso has been designated for. So this is
22 individual testimony.

23 THE WITNESS: The question was -- again?

24 MR. ERWIG: Q. I just want to use -- it
25 doesn't have to be an exact price. I just want to

1 use a baseline to just discuss the concept. So how
2 much -- so what is -- what is a traditional --
3 withdrawn.

4 What does an EndoWrist cost?

5 MS. LENT: Objection.

6 THE WITNESS: You might have a 10-life
7 instrument that might cost \$2200 for those 10 lives.

8 MR. ERWIG: Q. Okay. So for that 10-life
9 instrument that costs \$2200, the hospital would
10 purchase that instrument and would pay Intuitive
11 \$2200 up front, right?

12 A. Yes.

13 Q. Wouldn't, for example, pay it in like a
14 subscription model where each life that's used there
15 is -- \$220 are subtracted from the customer's
16 account, right?

17 A. Yes.

18 Q. Yes, there would be no subscription model?

19 A. Yes, there would be no subscription model.

20 Q. And so that 10 life instrument that costs
21 \$2200, what would a 15-life extended instrument
22 cost?

23 MS. LENT: Objection.

24 THE WITNESS: It could vary. Uhm, based on
25 the instrument and based on how we wanted to price

1 that. In general, with the extended use
2 instruments -- and there are limited number. I want
3 to say 13 or 14 instruments that had lives extended.
4 The per -- per unit cost went down. The -- but with
5 more lives, this instrument did cost more up front.

6 MR. ERWIG: Q. And when you say cost more
7 up front, can you give me sort of a general sense of
8 how much more? I mean, was it twice as expensive or
9 about how much more expensive would an extended use
10 instrument be?

11 A. I have to go -- I have to go to the price
12 list and pull up those instruments and walk through
13 that.

14 Q. Okay. But on the up-front basis, those
15 instruments would be more expensive; is that right?

16 MS. LENT: Objection.

17 THE WITNESS: The singular instrument up
18 front would generally be more than it was with less
19 lives. On a per procedure basis, it would be less.

20 MR. ERWIG: I'm going to screen share our
21 next exhibit. This will be 1/15/20 Clingan to Rosa
22 and Vavoso. This is in folder 6. Say the name of
23 exhibit again. 1/15/20 Clingan to Rosa and Vavoso.

24 (EXHIBIT 31 WAS MARKED FOR IDENTIFICATION.)

25 MR. ERWIG: Q. Screen share this exhibit

1 with you. Who is Patrick Clingan?

2 A. Would you scroll down, please? V.P. of
3 finance and sales operations.

4 Q. Does this appear to be -- withdrawn.

5 Are you in the to line on this e-mail?

6 A. Yes.

7 Q. The title of this e-mail is pricing slash
8 extended life instruments follow-up notes and
9 actions. Do you see that?

10 A. Yes.

11 Q. Was sent on January 15th, 2020; is that
12 right?

13 A. Yes.

14 Q. Does this appear to be an e-mail from
15 Patrick Clingan to yourself and Dave Rosa on
16 January 15th, 2020?

17 A. And others, yes.

18 Q. I want to ask you about one of the -- well,
19 withdrawn.

20 Mr. Clingan writes, "Team, here are our
21 collective notes and actions from our meeting on
22 extended life instruments in Dallas least week,
23 including the deck we reviewed. Please let us know
24 if anything is missing. Thanks."

25 Do you see that?

1 A. Yes.

2 Q. Then one of the -- withdrawn.

3 What do these bullet points reflect that
4 start with comments slash perspectives?

5 A. What do you mean by what do they represent?

6 Q. Well, Mr. Clingan writes, "Team, here are
7 our collective notes and actions."

8 And my question is are these bullet points
9 the collective notes from the meeting on extended
10 life instruments in Dallas?

11 A. They're snapshot bullets from a meeting
12 that was held. So it's hard to say what they say
13 collectively.

14 Q. I want to get a sense of some of the other
15 people on this e-mail. You mentioned Patrick
16 Clingan was a V.P. of finance and sales, right?

17 A. Yes.

18 Q. Who is Dave Rosa?

19 A. Chief business officer.

20 Q. Who was Marshall Mohr?

21 A. Chief financial officer.

22 Q. Jamie Samath?

23 A. Senior vice president for finance.

24 Q. Henry Charlton?

25 A. Senior vice president for U.S. commercial.

1 Q. And there's you, what was your title as of
2 this time?

3 A. Title I have now.

4 Q. And there's Bob Desantis. Who is Bob
5 Desantis?

6 A. Executive vice president product
7 operations.

8 Q. There's some others cc'd underneath this.
9 Who is Tina Todasco?

10 A. The V.P. of financial planning analysis.

11 Q. Mark Veeh?

12 A. He's in finance.

13 Q. Brandon Lamm?

14 A. Finance.

15 Q. Daniel Baker?

16 A. Product marketing.

17 Q. Andrea Morokutti?

18 A. Finance.

19 Q. Eddie Sarrine?

20 A. Finance sales operations.

21 Q. And Ryan Colwell?

22 A. Pricing.

23 Q. So we just discussed a long list of people
24 that are copied on this e-mail. Is there anything
25 else that you can recall at the meeting on extended

1 life instruments in Dallas in January of 2020?

2 MS. LENT: Objection; lacks foundation.

3 THE WITNESS: Nobody I can recall.

4 MR. ERWIG: Q. Now, were you in

5 attendance at that meeting in Dallas?

6 A. Yes.

7 Q. Describe to me what that meeting was about?

8 A. I'm just reading through the bullets.

9 Q. Sure. Take your time.

10 A. To refresh my memory. In -- I'll give you
11 sort of at the high level, it was a planning meeting
12 for launching extended use instruments. So there's
13 commentary around as price on procedures went down,
14 would that drive more demand. There's discussions
15 about considerations on future products. That's the
16 force sensing instrument bullet discussion and how
17 that future product might play in context to the
18 extended use instruments.

19 Q. Were there any product engineers present at
20 that meeting in Dallas?

21 A. Yeah, Bob Desantis, who is -- who's an
22 engineer -- he's an engineer by training. But
23 he's -- he was the head of the -- he's head of the
24 design team.

25 Q. What's Bob Desantis' exact job title?

1 A. Now it's chief product officer. In 2020,
2 it was senior V.P. of instruments and accessories.

3 Q. I want to draw your attention to the fourth
4 bullet point from the bottom which reads, "Consider
5 life extensions into logical buckets. Example 10,
6 15, 20, that share a rationale to ease sales slash
7 customer interaction."

8 Do you see that?

9 A. Yes.

10 Q. What is meant by "logical buckets"?

11 A. If you had a set of instruments that sort
12 of -- how a customer uses these instruments in a
13 given procedure. So there are 50 plus different
14 types of instruments, but maybe five that get used
15 in a prostatectomy, another five get used in
16 hysterectomy. Some might be the same. Some might
17 be different.

18 And as they came back and said, okay. Here
19 are the instruments that can go from 10 lives to 15,
20 or here are the ones that could go to 20, is there
21 an opportunity, as we take this to market, that it
22 makes sense how we would communicate the savings the
23 customer would realize at the procedure level.

24 MR. ERWIG: Now, are there -- when you're
25 testing instruments for life extension, do all of

1 the instruments -- well, withdrawn.

2 We can take this exhibit down. We'll share
3 the attachment. So it will be Exhibit 32.

4 (EXHIBIT 32 WAS MARKED FOR IDENTIFICATION.)

5 MR. ERWIG: Q. So this will be 1/15/20

6 Attach to Clingan to Rosa and Vavoso. See this on
7 the screen in front of you, Mr. Vavoso?

8 A. Yeah.

9 Q. Do you recognize this?

10 A. Not particularly. But you said it was the
11 attachment that was part of that e-mail.

12 Q. Correct. Does this appear to be the
13 attachment to that e-mail that you received from
14 Mr. Clingan?

15 A. Appears to be.

16 Q. This is a PowerPoint titled I&A pricing
17 architecture 2020?

18 A. That's what it says.

19 Q. Any reason to believe that that's not what
20 this is?

21 A. Can you go back? Is this on the folder
22 share?

23 Q. Should be.

24 MS. LENT: Yes.

25 MR. ERWIG: It's a little bit of a --

1 MS. LENT: Yes.

2 MR. ERWIG: -- so it might take a second.

3 MS. LENT: Yeah, it's up. You just have to
4 refresh.

5 THE WITNESS: Just give me a sec.

6 MR. ERWIG: Q. Let me know when you're
7 ready to answer a question about it.

8 A. Okay.

9 Q. This appear to be that PowerPoint that you
10 received from Mr. Clingan?

11 A. Yes.

12 MR. ERWIG: Stop screen sharing this
13 exhibit. Our next exhibit is going to be
14 Exhibit 33.

15 (EXHIBIT 33 WAS MARKED FOR IDENTIFICATION.)

16 MR. ERWIG: Q. This will be 4/15/20 Life
17 Extension for Bob's Staff.

18 Mr. Vavoso, do you see this document on the
19 screen in front of you?

20 A. Yes.

21 Q. Does this appear to be a document titled
22 core life extension program strategy from
23 April 15th, 2020?

24 A. That's what it says.

25 Q. There's an Intuitive label on the bottom

1 left-hand corner of that slide; is that right?

2 A. Yes.

3 Q. There's a slide, slide 3, that's labeled
4 executive steering committee, includes Bob
5 Desantis and yourself and others on that.

6 Do you see that?

7 A. Can you just expand that? Yep.

8 Q. Then there's some details about a broad
9 cross functional product team and an agenda.

10 Do you see that?

11 A. I do.

12 Q. Do you recognize this document?

13 A. No.

14 Q. Appear to be a PowerPoint -- withdrawn.

15 Does this appear to be an Intuitive
16 PowerPoint with the title core life extension
17 program strategy?

18 A. That's what it appears -- I mean, it's what
19 it's labeled as on the page.

20 Q. Any reason to believe that this is not a --
21 an Intuitive PowerPoint?

22 A. No.

23 MR. ERWIG: Stop Screen sharing this
24 exhibit. Next exhibit is going to be in folder 5.
25 This will be Exhibit No. 34. This will be 3/6/17

1 Desdmet to Vavoso, et al.

2 (EXHIBIT 34 WAS MARKED FOR IDENTIFICATION.)

3 MR. ERWIG: Q. Screen share this. See

4 this on the screen in front of you, Mr. Vavoso?

5 A. Yes.

6 Q. Do you recognize this?

7 A. No.

8 Q. Was -- who is Damien Desmedt?

9 A. General manager for France.

10 Q. You're copied on this e-mail, right?

11 A. Yes.

12 Q. Is this an e-mail from Damien Desmedt to

13 you and others with the subject confidential re Q1

14 business update, sent on March 6, 2017; is that

15 right?

16 A. Yes.

17 Q. Any reason to believe this isn't an e-mail

18 from Damien Desmedt to yourself and others at

19 Intuitive?

20 A. No.

21 MR. ERWIG: Going to look at one of the

22 attachments. We can take this down. Next exhibit

23 will be Exhibit 35. This will be 3/6/17 Attach to

24 Desmedt to Vavoso.

25 (EXHIBIT 35 WAS MARKED FOR IDENTIFICATION.)

1 MR. ERWIG: Q. Screen share this document
2 with you. See this on the screen in front of you?

3 A. Yes.

4 Q. This appear to be one of the attachments to
5 the e-mail that you were sent by Mr. Desmedt?

6 A. Labeled as such, yes.

7 Q. Any reason to believe it's not the
8 attachment to the e-mail sent from Mr. Desmedt?

9 A. No.

10 MR. ERWIG: Stop screen sharing this
11 exhibit. I'm going to screen share our next
12 exhibit. This will be Exhibit No. 36. This will be
13 2/28/20 Alter to Alter and Kim.

14 (EXHIBIT 36 WAS MARKED FOR IDENTIFICATION.)

15 MR. ERWIG: Q. Screen share this with
16 you. Can you see this on the screen in front of
17 you, Mr. Vavoso?

18 A. Give me a minute, yep.

19 Q. Who is Nick Alter?

20 A. I know who Nick Alter is. I don't know
21 exactly what he does. Part of the finance
22 organization.

23 Q. We can scroll down.

24 A. Finance sales operations.

25 Q. Is he an Intuitive Surgical employee?

1 A. Yes.

2 Q. Do you recognize his e-mail domain as --
3 e-mail domain of Intuitive Surgical?

4 A. Yes.

5 Q. Does this appear to be an e-mail from Nick
6 Al- -- withdrawn.

7 Who is Philip Kim?

8 A. Manager of investor relations.

9 Q. He also work for Intuitive Surgical?

10 A. Yes.

11 Q. Does this appear to be an e-mail from Nick
12 Alter at Intuitive Surgical to Nick Alter at
13 Intuitive Surgical copying Philip Kim at Intuitive
14 Surgical?

15 A. Appears so.

16 Q. And there's some attachments here,
17 including UBS doc panel with highlight.docx, RJ
18 2.17.20 coronavirus note.pdf, and DB Feb 20 pre-call
19 note.pdf. You see that?

20 A. Yes.

21 Q. Then there's a segment in Mr. Alter's email
22 where he writes, "Deutsche Bank deeper dive on
23 third-party risk to I&A segment."

24 Do you see that?

25 A. Yes.

1 MR. ERWIG: Stop screen sharing this
2 exhibit. Next exhibit is going to be one of the
3 attachments. This will be DB -- this will be
4 Exhibit 37, DB Feb 20 Pre-call Note.

5 (EXHIBIT 37 WAS MARKED FOR IDENTIFICATION.)

6 MR. ERWIG: Q. You see this on the screen
7 in front of you, Mr. Vavoso?

8 A. Yes.

9 Q. Now, at the very top, there's a line that
10 says, "Provided for the exclusive use of
11 philip.kim2@intosurge.com on 2020/02/20."

12 Do you see that?

13 A. Yes.

14 Q. Is that February 20th, 2020?

15 A. Appears to be. A little hard to read.

16 Q. Can zoom in. Also a little bit choppy just
17 in the way that the graphic exists. So can you see
18 that okay?

19 A. Yes. 2/20 and 2020.

20 Q. And Philip Kim is an Intuitive Surgical
21 employee; is that right?

22 A. Yes.

23 Q. What does this document appear to be?

24 A. Some outside bank analyst report. Somebody
25 that follows the -- the company.

1 Q. This document is titled DB Feb 20 Pre-call

2 Note. See that?

3 A. Where are you reading? Oh, up there. I

4 see that title, yeah.

5 Q. Does this appear to be an attachment to the

6 e-mail sent by Mr. Alter to Mr. Alter and Mr. Kim?

7 A. Appears to be.

8 MS. LENT: I'm going to object to questions

9 about this document. You haven't even established

10 if the witness ever saw it.

11 MR. ERWIG: Stop screen sharing this

12 exhibit. I'm going to screen share our next

13 exhibit. This will be Exhibit No. 38.

14 (EXHIBIT 38 WAS MARKED FOR IDENTIFICATION.)

15 MR. ERWIG: Q. This will be 5/6/18

16 Clingan to Mohr and Vavoso. Can you see this on the

17 screen in front of you, Mr. Vavoso?

18 A. Yes.

19 Q. Who is Patrick Clingan?

20 A. V.P. finance sales operations.

21 Q. Do you see this top e-mail is an e-mail

22 from Patrick Clingan at Intuitive Surgical to

23 Marshall Mohr, yourself, and others at Intuitive?

24 A. Yes.

25 Q. Then there is an attachment that's CCO 8

1 year LRMV11.xlsx. Do you see that?

2 A. Yes.

3 Q. Did you receive this e-mail from

4 Mr. Clingan?

5 A. It indicates I did.

6 Q. Any reason to believe that you didn't

7 receive this e-mail from Mr. Clingan?

8 A. No.

9 Q. Screen share next exhibit -- well,

10 withdrawn.

11 Does this appear to be an e-mail from

12 Patrick Clingan to Marshall Mohr, yourself, and

13 others at Intuitive Surgical sent on May 6th,

14 2018?

15 A. Yes.

16 MR. ERWIG: Stop screen sharing this

17 exhibit. Next exhibit will be 5/6/18 Attach to

18 Clingan to Mohr and Vavoso. This is the CCR 8 year

19 LRM v11.xlsx document. Screen share this with you.

20 (EXHIBIT 39 WAS MARKED FOR IDENTIFICATION.)

21 MR. ERWIG: Q. You see this on the screen

22 in front of you, Mr. Vavoso?

23 A. Yes.

24 Q. I just have a couple of questions. Does

25 this appear to be the attachment to the e-mail sent

1 from Mr. Clingan to yourself and others at

2 Intuitive?

3 A. Yes.

4 Q. It lists some years. You see that?

5 A. I do.

6 Q. It lists some procedures in those years.

7 Do you see that?

8 A. Yes.

9 Q. It lists some assumptions next to those
10 years, right?

11 A. Yes.

12 Q. Any reason to believe this isn't the
13 document that was sent to you on May 6th, 2018, by
14 Mr. Clingan?

15 A. No.

16 Q. Does this appear to be an Excel spreadsheet
17 that reflects a number of years and projections on
18 procedures, revenue, and various assumptions?

19 MS. LENT: Objection.

20 THE WITNESS: Yes.

21 MR. ERWIG: Stop screen sharing this
22 exhibit. Mr. Vavoso, I have no further questions at
23 this time subject to our right to re-open the
24 deposition to ask about some of the earlier
25 documents that we discussed. Thank you very much

1 for your time today.

2 EXAMINATION BY MS. LENT

3 MS. LENT: Q. I just have a couple of
4 questions. Okay. Can we pull up Exhibit 10, which
5 is the February 20th, 2017, e-mail from Dave Rosa
6 to Glenn Vavoso and Marshall Mohr.

7 Alena, is that something you can do? We
8 usually have a concierge in our depositions to take
9 care of that, but apparently there's no one here.

10 MS. PERSZYK: Yeah, sure. Give me one
11 second to figure it out. Apologies.

12 MS. LENT: Thank you. No problem.

13 MS. PERSZYK: Karen, do you remind
14 restating the Bates number? These aren't labeled in
15 the folder.

16 MS. LENT: Absolutely. It is Intuitive
17 00139157.

18 MS. PERSZYK: Great. Thanks. One second.
19 Is this the correct document, Karen?

20 MS. LENT: Q. It is. Thank you.

21 Mr. Vavoso, who is Raj Vattikuti.

22 A. This is 2017. At the time, he was the
23 owner of the distributor in India for da Vinci
24 products.

25 Q. And was he an Intuitive employee?

1 A. No.

2 MS. LENT: All right. Let's pull up
3 Exhibit 11, which is the attachment to that e-mail.
4 The Bates number starts with 00139159.

5 MS. PERSZYK: I believe you should be able
6 to see it now.

7 MS. LENT: Q. Yes, thank you. That's
8 it. Mr. Vavoso, is this a document that Raj sent to
9 Dave Rosa?

10 MR. ERWIG: Object to the form.

11 THE WITNESS: It -- it is. Because he
12 called out this competitive -- in his e-mail to
13 Dave, which Dave then forwarded to myself and
14 Marshall, Raj said here are the documents attached,
15 which would be agenda for the meeting and the
16 competitive landscape or competitive update.

17 MS. LENT: Q. And do you have any
18 understanding about whether this competitive
19 landscape relates to any particular geographic area?

20 A. Raj's only area of expertise would be
21 India. So it was directly about competitive
22 landscaping in India. So this is -- these are his
23 note and his summary of that, not -- not
24 particularly a company view of that. It's his
25 assessment.

1 MS. LENT: Okay. Thank you. That's the --
2 those are the only questions I have.

3 MR. ERWIG: Nothing further from me either.
4 We can go off the record.

5 MS. LENT: Before we go off the record, I
6 just want to make sure the transcript is marked
7 highly confidential until we have an opportunity to
8 review it and fully designate, you know, according
9 to the protective order.

10 MR. ERWIG: That's fine. And I believe I
11 stated our position with regards to the one document
12 and any further questions. So just want to make
13 sure that's noted as well.

14 MS. LENT: Your position on that is noted.

15 VIDEOGRAPHER: All right. This marks the
16 end of today's deposition of Glenn Vavoso consisting
17 of four media. We are off the record at 5:16 p.m.

18 (The deposition was concluded at 5:16 p.m.)

19

20

21

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25

Glenn Vavoso

CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter, State of California, hereby certify that the witness in the foregoing deposition was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete, and true record of said testimony; and that the witness was given an opportunity to read it and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

Executed this 17th day of May, 2021.

LAURA AXELSEN, C.S.R. 6173

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

25 _____

Exhibit 4

1 IN THE UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF FLORIDA

3 TAMPA DIVISION

4
5 REBOTIX REPAIR, LLC

6 Plaintiff,

7 vs. Case No. 8:20-CV-02274

8 INTUITIVE SURGICAL, INC.,

9 Defendant.

10 -----/

11
12
13 REMOTELY CONDUCTED

14 VIDEOTAPED DEPOSITION OF RONALD LEE BAIR, JR.

15 Livermore, California (Witness's location)

16 Monday, May 24, 2021

17
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19
20
21 Stenographically reported by:
LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC
22 California CSR No. 10523
Washington CSR No. 3318
23 Oregon CSR No. 19-0458
Texas CSR No. 11318

24
25 Job No. 194222

1 May 24, 2021
2 12:39 p.m. PDT
3
4 Remotely conducted videotaped deposition
5 of Ronald Lee Bair, Jr., before Lorrie L.
6 Marchant, a Certified Shorthand Reporter,
7 Registered Merit Reporter, Certified
8 Realtime Reporter, California Certified
9 Realtime Reporter, Certified Realtime
10 Captioner.

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1 A P P E A R A N C E S

2 (All appearances remotely via Zoom)

3

4 APPEARING ON BEHALF OF THE PLAINTIFF:

5 DOVEL & LUNER

6 BY: ALEXANDER ERWIG, ESQ.

7 LORENZO LAMO, LEGAL ASSISTANT

8 201 Santa Monica Boulevard

9 Santa Monica, CA 90401

10

11 APPEARING ON BEHALF OF THE DEFENDANT:

12 SKADDEN ARPS SLATE MEAGHER & FLOM

13 BY: KAREN LENT, ESQ.

14 WILLIAM DARIO, ESQ.

15 One Manhattan West

16 New York, NY 10001

17

18 ALSO PRESENT:

19 Danielle Greene, Videographer

20

21 ---oOo---

22

23

24

25

1 LIVERMORE, CALIFORNIA (Witness's location)

2 MONDAY, MAY 24, 2021

3 12:39 p.m. PDT

4 THE VIDEOGRAPHER: My name is

5 Danielle Greene. I am the legal video specialist in

6 association with TSG Reporting.

7 Due to the severity of COVID-19 and

8 following the practice of social distancing, I will

9 not be in the same room with the witness. Instead,

10 I will record this videotaped deposition remotely.

11 The court reporter is Lorrie Marchant in association

12 also with TSG.

13 Do all parties stipulate to the validity of

14 this video recording and remote swearing and that it

15 will be admissible in the courtroom as if it had

16 been taken following Rule 30 of the Federal Rules of

17 Civil Procedure and the state's rules where this

18 case is pending?

19 MR. ERWIG: Plaintiff stipulates.

20 MS. LENT: Defendants do as well.

21 THE VIDEOGRAPHER: Thank you.

22 This is the start of Media 1 in the

23 videotaped deposition of Ron Bair in the matter of

24 Rebotix Repair LLC v. Intuitive Surgical, Inc.,

25 filed in the district court of Florida. This

1 deposition is being held via Zoom with all
2 participants attending remotely on Monday, May 24th,
3 2021, at around 12:41 p.m.

4 My name is Danielle Greene. I am the video
5 specialist from TSG Reporting. The court reporter
6 today is Lorrie Marchant in association with TSG
7 Reporting.

8 Counsel, will you please introduce
9 yourself, state whom you represent, and the court
10 reporter may then swear in the witness.

11 MR. ERWIG: On behalf of plaintiff, Rebotix
12 Repair, Alexander Erwig of Dovel & Luner. With me
13 legal assistant, Lorenzo Lamo.

14 MS. LENT: Karen Lent from Skadden on
15 behalf of Intuitive Surgical.

16 MR. DARIO: William Dario from Skadden on
17 behalf of Intuitive Surgical.

18 THE STENOGRAPHER: And I'll go ahead and
19 swear in the witness, then.

20 RONALD LEE BAIR, JR.,

21 FIRST DULY SWORN/AFFIRMED, TESTIFIED AS FOLLOWS:

22 EXAMINATION BY MR. ERWIG

23 BY MR. ERWIG:

24 Q. Good afternoon, Mr. Bair.

25 A. Hi.

1 Q. Could you please state your full name for
2 the record.

3 A. Sure. My full legal name is Ronald Lee
4 Bair, Jr.

5 Q. And I understand you work for Intuitive
6 Surgical. Is that right?

7 A. That is correct.

8 Q. What is your position at Intuitive?

9 A. I am the senior director of services
10 innovation and product management.

11 Q. Can you explain to me a little bit what
12 that role entails.

13 A. Sure. So the purview includes product
14 management, which is the definition and deployment
15 of service and service lines as a product to support
16 Intuitive's products and their customers. And it
17 also includes our services business system team and
18 our services analytics team.

19 Q. When you say services business and services
20 analytics team, what do you mean by that?

21 A. Services business systems. So IT-oriented
22 systems. For example, for order management, our
23 configuration management, field service order
24 management, et cetera, the back-end IT operations
25 side of that. And then also the analytics side of

1 it, drawing business intelligence from the data

2 captured by our business systems.

3 Q. What sorts of business intelligence do you
4 draw from analytics captured by business systems?

5 A. It ranges widely from economic factors,
6 such as cost to serve and support our customers, as
7 well as ensuring that we meet our service-level
8 agreements as it relates to time to respond, time to
9 resolve service orders, the efficiency and
10 effectiveness of our teams, et cetera.

11 Q. Are you personally involved with -- when
12 you say "customers," some of Intuitive's customers
13 are hospitals; is that right?

14 A. That is correct.

15 Q. Are you personally involved in capturing
16 analytics and data from hospitals?

17 A. I am not personally involved.

18 Q. How, if at all, are you involved in
19 Intuitive's relationship with its hospital
20 customers?

21 A. I handle escalations. For example, if
22 customers have concerns around contract compliance
23 or we have a maintenance issue that may need to be
24 escalated, I am -- that's an element of my role, is
25 to help field those escalations. And I also lead

1 the team that is involved in the analytics element
2 of our performance against our customers' exception
3 as it relates to their service contracts and
4 service-level agreements.

5 Q. About how long have you been the senior
6 director for services innovation and product
7 management at Intuitive?

8 A. For roughly three months now.

9 Q. What was your role prior to your current
10 role?

11 A. Starting in July of last year, so July 1st
12 of 2020, I was the senior director of services
13 strategy.

14 Q. What did you do as a senior director of
15 services strategy?

16 A. It was a similar function as it relates to
17 the product management element but established more
18 of a long-range plan, three- to five- to eight-year
19 plan as it related to innovation and our global
20 service lines and service as a product.

21 Q. You mentioned a three-year, a five-year,
22 and eight-year plan. What are some of the
23 components of that planning?

24 A. Establishing -- for example, one of our
25 first initiatives was agreeing, as a leadership team

1 and with key stakeholders, on what the key strategic
2 breakthroughs were we would need to achieve in order
3 to compete effectively in this -- the
4 robotic-assisted surgery space over the next, for
5 example, three to eight years.

6 Q. You mentioned competing effectively in the
7 robotic surgery space.

8 Who else is involved in the long-term
9 strategic planning for the robotic surgery space?

10 A. We have a corporate strategy team, our
11 entire executive management team, and also each
12 product management team within our various product
13 lines is accountable and responsible for
14 establishing and articulating the strategic
15 direction of the company.

16 MR. ERWIG: I'm going to screen share some
17 notes that were taken. This will be Plaintiff's
18 Exhibit 1.

19 (Marked for identification purposes,
20 Exhibit 1.)

21 MR. ERWIG: This is a set of notes titled
22 "Ron Bair." I've reflected that you're the senior
23 director of services innovation and product
24 management. Your duties include handling
25 escalations and leading analytics team and that

1 prior to that you were involved in establishing
2 long-term planning and strategic breakthroughs.

3 Mark that as Exhibit 1, and we'll get it
4 scanned in at the next break.

5 MS. LENT: Is there a question about that
6 document?

7 BY MR. ERWIG:

8 Q. Mr. Bair, did you prepare to testify today?

9 A. Yes.

10 Q. How did you prepare to testify today?

11 MS. LENT: Can I object for a second? I
12 object to you introducing an exhibit that you had
13 literally no questions about.

14 THE WITNESS: Outside of conversations with
15 counsel, I familiarized myself with documentation
16 that may potentially be related to this subject.
17 And I believe that was the extent of the
18 preparation.

19 BY MR. ERWIG:

20 Q. Do you have any documents in front of you
21 now that are not visible to the camera?

22 A. I do not.

23 Q. Which documents did you look at to prepare?

24 MS. LENT: Objection. That calls for
25 privileged information. You haven't established a

1 basis to ask for those outside the attorney-client
2 privilege.

3 MR. ERWIG: You're instructing him not to
4 answer?

5 MS. LENT: I am instructing him not to
6 answer.

7 BY MR. ERWIG:

8 Q. Now, Mr. Bair, do you have some familiarity
9 with the da Vinci surgical system?

10 A. Yes, I do.

11 Q. How are you familiar with that surgical
12 system?

13 MS. LENT: Object to the form.

14 THE WITNESS: Could you clarify in what
15 capacity?

16 BY MR. ERWIG:

17 Q. Well, sure. You've been at Intuitive --
18 withdrawn.

19 How long have you been at Intuitive overall
20 in your various roles?

21 A. I have been at Intuitive for almost eight
22 years.

23 Q. During that time you developed some
24 familiarity with the da Vinci surgical system?

25 A. Yes, I have. And that familiarity would

1 range from its use on my daughter as a surgical
2 patient when she was two years old up to my
3 experience as a field service director supporting
4 our customers who use the products.

5 Q. So you're familiar with the way that the
6 da Vinci surgical system works; is that right?

7 A. I am familiar with the high-level
8 operations of the system, that is correct.

9 Q. You're generally family with the various
10 components of the da Vinci surgical system; is that
11 right?

12 A. I do have general familiarity, yes.

13 Q. You understand that there's a surgical
14 robot that has four arms in the case of the
15 da Vinci Si and Xi; right?

16 A. That is correct.

17 Q. You understand that a surgeon who sits at a
18 console manipulates those arms using joy sticks;
19 right?

20 A. I refer to them as master tool
21 manipulators, but yes.

22 Q. When you say master tool manipulator, can
23 you give me a description of what those master tool
24 manipulators look like?

25 A. Sure. They are multiple-axes gimbals and

1 joints with two graspers for a surgeon to grasp and
2 control, as demonstrated on the video.

3 Q. So as the surgeon sitting at the console
4 manipulating those multijoint instruments, those
5 movements are mimicked by the da Vinci surgical
6 robot; is that right?

7 A. That is correct.

8 Q. Now, the actual -- I want to talk with you
9 a little bit about the actual surgical robot, the
10 da Vinci.

11 Are you familiar with the da Vinci Si
12 surgical robot?

13 A. Yes.

14 Q. Now, I understand that the da Vinci Si has
15 four arms and typically one of those arms is holding
16 a camera; is that right?

17 A. That is correct.

18 Q. That camera transmits a 3D picture to the
19 surgeon sitting at the surgeon table; right?

20 A. It is a live video image, yes.

21 Q. So that live video image is a 3D
22 high-definition image that the surgeon sees as he's
23 manipulating the instruments remotely from the
24 surgeon console; is that right?

25 A. Yes, as he or she, the surgeon, would.

1 That is correct.

2 Q. Now, the actual surgical robot itself,
3 there's three arms that can be used in the actual
4 surgery; is that right?

5 A. I do not believe that to be correct.

6 Q. The entire robot has four arms; right?

7 A. That is correct.

8 Q. One of the arms holds the camera; right?

9 A. Depending on the generation of the surgical
10 robot, there may be one dedicated camera arm or a
11 camera to be used in any arm or four instruments
12 could be used in arms depending on the model.

13 Q. Well, let's break it down. For the
14 da Vinci Si, is one arm dedicated to the camera?

15 A. Yes.

16 Q. For the da Vinci Xi, is one arm dedicated
17 to the camera?

18 A. No.

19 Q. So the da Vinci Si has one arm dedicated to
20 the camera and three arms that have EndoWrists
21 attached to them that can be used for surgery?

22 A. That is correct.

23 Q. And the da Vinci Xi has up to four arms,
24 all of which can be outfitted with EndoWrists that
25 can be used for surgery; correct?

1 A. That is correct.

2 Q. What is an EndoWrist?

3 A. It is, to my understanding, our trademarked
4 name for our suite of the instrument portfolio that
5 is used in conjunction or used on the da Vinci
6 surgical system.

7 Q. Now, when you say the instrument portfolio,
8 those are instruments that are very similar to
9 traditional laparoscopic instruments; right?

10 MS. LENT: Object to the form.

11 THE WITNESS: I do not agree with that
12 statement.

13 BY MR. ERWIG:

14 Q. Well, certainly, the functions of
15 individual instruments are very similar to the
16 functions performed by traditional laparoscopic
17 instruments; right?

18 MS. LENT: I'm going to object to the form.

19 THE WITNESS: I do not agree with that
20 statement.

21 BY MR. ERWIG:

22 Q. Well, you have some -- withdrawn.

23 Do you have some familiarity with
24 traditional laparoscopic instruments?

25 A. Yes, I do.

1 MS. LENT: Object to the form.

2 BY MR. ERWIG:

3 Q. Traditional laparoscopic instrument, one of
4 the forms of a laparoscopic instrument is a grasper;
5 is that right?

6 A. That is correct.

7 Q. Another form of traditional laparoscopic
8 instrument is a Potts scissor; is that right?

9 A. I am unaware of that type of instrument.

10 Q. Are you aware that there are some
11 traditional laparoscopic instruments that are --
12 look like little scissors?

13 A. Yes.

14 Q. Those little scissors, they're designed to
15 make incisions or to cut inside the patient; right?

16 A. In addition to other things, yes.

17 Q. The graspers, those are used to, in some
18 cases, pull apart tissue, for example; right?

19 A. Or retraction, yes, as an example.

20 Q. Now, the Intuitive da Vinci EndoWrists
21 perform those same functions; right? They might
22 have graspers that pull apart tissue; right?

23 A. They achieve the same intended objective
24 within the context of grasping or dissecting,
25 cutting, et cetera.

1 Q. Well, let's simplify that. The graspers,
2 they also grab and potentially pull apart tissue;
3 right?

4 A. Correct.

5 Q. And the scissors, they cut tissue too;
6 right?

7 A. That is correct.

8 Q. That's similar with all the other types of
9 EndoWrists as well; right? They are designed to
10 perform functions that are similar to those that
11 traditional laparoscopic instruments perform; right?

12 MS. LENT: Object to the form.

13 THE WITNESS: I believe I would articulate
14 it differently.

15 BY MR. ERWIG:

16 Q. Well, how would you articulate it, sir?

17 A. I would state that the instruments actually
18 function in a differentiated way in that they are
19 wristed and provide a range of motion that is not
20 provided by traditional laparoscopic instruments.

21 Q. Right. There's some important advantages
22 to EndoWrists relative to traditional laparoscopic
23 instruments; right?

24 A. That is correct.

25 Q. One of those advantages is that the

1 instruments are wristed and have a wider range of
2 motion; right?

3 A. That is correct.

4 Q. But the ultimate function being performed
5 by the instrument, those functions are similar
6 between EndoWrists and traditional laparoscopic
7 instruments; right?

8 A. They are similar.

9 Q. In fact, the actual end function, you know,
10 whether tissue is being pulled open with a
11 multiwristed instrument or by a nonmultiwristed
12 instrument, tissue is still being pulled apart;
13 right?

14 A. Yes.

15 Q. Tissue is still being cut by a pair of
16 scissors; right?

17 A. That is correct.

18 MR. ERWIG: I'm going to screen share our
19 first exhibit. This will be in Folder 1. This will
20 be 9'5'19, Rawls to Sykes and Bair.

21 THE STENOGRAPHER: I thought this was
22 Number 2. Didn't you mark the notes?

23 MR. ERWIG: I'm sorry. You're right. This
24 will be Exhibit No. 2.

25 ///

1 (Marked for identification purposes,
2 Exhibit 2.)

3 MR. ERWIG: I'll screen share.

4 BY MR. ERWIG:

5 Q. Mr. Bair, do you see this document on the
6 screen in front of you?

7 A. I do.

8 Q. Do you recognize this document?

9 A. Allow me a moment to review and refresh,
10 please.

11 MS. LENT: Alexander, I still don't have
12 this in the exhibit folder. Have you put it there?
13 Now I have it. Thank you.

14 THE WITNESS: I'll refresh as well.

15 Okay. It doesn't -- the specific contents
16 of it, I don't specifically recall, but, yes, this
17 communication does ring a bell.

18 BY MR. ERWIG:

19 Q. Does this appear -- withdrawn.

20 Who is Chace Rawls?

21 A. He is the key accounts director for a
22 couple of our integrated delivery network customers,
23 or IDN customers.

24 Q. When you say "key accounts director," can
25 you explain to me what you mean by that?

1 A. Sure. His title is in the e-mail, director
2 academic key accounts. So there are certain
3 customers who do not manage their programs at the
4 individual hospital level but rather at an
5 integrated or a network-oriented level. And we have
6 sales leaders who are assigned to partner with those
7 types of customers to help them optimize their
8 program, for example, from a fleet management
9 perspective versus at individual hospital sites.

10 Q. Now, Mr. Rawls is sending this e-mail on
11 September 5th, 2019; is that right?

12 A. It appears so.

13 Q. And he's sending it to Shelton Sykes,
14 Matthew Thomas, and yourself, all at Intuitive
15 Surgical; right?

16 A. That is correct.

17 Q. The subject is 2019-9-5 BSWH QBR.pptx. Do
18 you see that?

19 A. Yes.

20 Q. Mr. Rawls writes:

21 "Fellas, attached is the presentation
22 that Shelton and I put together for a
23 meeting this afternoon with Baylor."

24 Do you see that?

25 A. Yes.

1 Q. Why were you meeting with Baylor?

2 A. The biomedical -- I believe it was the VP
3 of biomedical engineering or the equivalent at the
4 Baylor Scott & White Health system had requested a
5 quarterly review of the -- both the commercial
6 side -- so what we deemed to be the commercial side
7 of their clinical side -- of activities associated
8 with Intuitive. So, for example, procedures and
9 types of procedures completed, instrument
10 performance and return rates, and then also
11 maintenance activity that we were engaging in.

12 MR. ERWIG: I'm going to stop screen
13 sharing this exhibit.

14 The next exhibit is going to be Exhibit 3.
15 This will be 9'5'19 Attach to Rawls to Sykes and
16 Bair. And this is the PowerPoint that's attached to
17 that e-mail.

18 (Marked for identification purposes,
19 Exhibit 3.)

20 MR. ERWIG: I'll screen share it and give
21 you a minute to pull it up.

22 THE WITNESS: I will refresh. Okay. I've
23 pulled it up.

24 BY MR. ERWIG:

25 Q. You see the first page of this policy and

1 procedure is BSWH quarterly business review?

2 A. Yes.

3 Q. Does this appear to be the PowerPoint

4 that's attached to the e-mail sent from Mr. Rawls to

5 Mr. Sykes and yourself?

6 A. It does appear to be.

7 Q. How -- withdrawn.

8 Do you recognize this document generally?

9 A. May I have a moment to review it?

10 Q. Sure. We're going to go through parts of

11 it as well if that will help.

12 A. Sure.

13 Yes, I do recognize the document.

14 Q. How do you recognize it?

15 A. I reviewed it on behalf of Chace's request,
16 to my recollection, and also was likely engaged in
17 the quarterly review meeting with Baylor.

18 Q. I'm going to scroll to page 25 with you.

19 Before I ask you some questions about this,
20 can you describe to me what the quarterly review
21 meeting with Baylor looked like?

22 A. Sure. I believe there is an agenda as part
23 of the presentation. May I review and provide the
24 summary of that agenda?

25 So I am looking at page 2 of the document.

1 The first item on the agenda was contract review as
2 it related to systems and I&A, the service review,
3 and quality events in general and specifically to
4 Baylor Scott & White, which was one of the requests
5 from their biomedical management team.

6 And should I read the following items on
7 the agenda?

8 Q. No. That's okay. Does this agenda
9 generally reflect the way that the meeting with
10 Baylor Scott & White progressed?

11 A. According to my recollection, yes.

12 Q. I'm going to move down to page 25 of this
13 presentation with you. And you see that this is a
14 page titled "Enabling more minimally invasive
15 procedures, global adoption of da Vinci surgery."

16 Do you see that?

17 A. One moment. Yes.

18 Q. In this slide you can see that minimally
19 invasive procedures performed using the da Vinci
20 robot have grown year over year from 2014 to 2018;
21 right?

22 A. That is correct.

23 Q. And specifically there was an 18 percent
24 growth year over year from 2017 to 2018; is that
25 right?

1 A. It seems to be indicated in the
2 presentation, yes.

3 Q. And there was also a 33 percent
4 year-over-year growth in the general surgery
5 category. That's the green category. Is that
6 right?

7 A. That is correct.

8 Q. Now, in 2019 this presentation was given on
9 September 5th, 2019; is that right?

10 A. I do not recall the date of delivery. I
11 would have to consult my archived calendar.

12 Q. Well, the presentation was -- withdrawn.
13 This version of the presentation was sent
14 to you as of September 5th, 2019; right?

15 A. That is correct.

16 Q. And at that time all of the surgeries for
17 the year hadn't yet been tabulated or calculated;
18 right?

19 A. That is correct.

20 Q. And so this wouldn't reflect a drop from
21 2018 to 2019; this would just reflect that the year
22 2019 was not yet completed. Right?

23 A. Correct. We would commonly call that the
24 year-to-date procedure number.

25 Q. And it's your understanding that there's

1 been year-over-year growth in minimally invasive
2 procedures performed using the da Vinci robot from
3 2018 to 2019; right?

4 A. Yes. I do believe the full-year procedure
5 volume indicated growth from 2018 to 2019.

6 Q. And there was also year-over-year growth
7 from 2019 to 2020; right?

8 A. Given the disruption from COVID, I don't
9 recall our specific growth as it related to 2019 to
10 2020.

11 Q. I'm going to move on to page 27 with you.
12 You see that this slide is titled "da Vinci Xi is
13 helping accelerate hernia MIS adoption"?

14 A. Yep.

15 Q. What is MIS?

16 A. That is the term that we use to indicate
17 minimally invasive surgery.

18 Q. On this slide it says, "Approximately three
19 in eight hernia surgeons performed a hernia repair
20 using da Vinci systems."

21 Do you see that?

22 A. I'm zooming in. Yes, I do see that.

23 Q. And below that it says, "81 percent of MIS
24 general surgery fellows were trained on da Vinci
25 technology."

1 Do you see that?

2 A. Yes.

3 Q. Is it your understanding that over
4 80 percent of general surgery fellows are --
5 withdrawn.

6 Is it your understanding that over
7 80 percent of general surgery fellows are trained on
8 da Vinci technology?

9 MS. LENT: Objection. Misstates the
10 document.

11 THE WITNESS: Yeah, I would say this is
12 outside of my area of expertise, but it seems to
13 indicate so in the document.

14 BY MR. ERWIG:

15 Q. Do you have a general familiarity with the
16 training that's required for a surgeon to perform a
17 da Vinci surgery?

18 A. I am not intimately familiar with that. I
19 am familiar with our various -- high-level
20 familiarity with our various training options
21 provided by Intuitive.

22 Q. You're aware that surgeons, they need quite
23 a bit of training before they can perform an
24 operation with the da Vinci surgical robot; is that
25 right?

1 MS. LENT: Object to the form.

2 THE WITNESS: Could you clarify what you
3 mean by "quite a bit"?

4 BY MR. ERWIG:

5 Q. Well, sure. What's your understanding of
6 how much training and time is required before a
7 surgeon can perform a surgery with a da Vinci
8 surgical robot?

9 A. Traditionally within the scope of what I'm
10 aware of, I do know that getting to 100 cases with
11 the robotic system is an important milestone as it
12 relates to training and use.

13 Q. 100 cases, that would be 100 practice
14 surgeries performed using the da Vinci surgical
15 robot; is that right?

16 A. That is correct.

17 Q. So that would be a surgeon doing
18 effectively 100 mock surgeries before they could
19 carry out a real surgery with a da Vinci surgical
20 system; is that right?

21 A. I'm sorry. I --

22 MS. LENT: Objection.

23 THE WITNESS: If that's your understanding,
24 then I misspoke. So to clarify, a trained surgeon
25 reaches proficiency generally -- or roughly after

1 100 cases is an important benchmark as it relates to
2 full proficiency, familiarity with the technology,
3 et cetera.

4 BY MR. ERWIG:

5 Q. Well, my question, sir, was a little bit
6 different. It was about the training that a surgeon
7 has to perform before they can perform their very
8 first procedure with the da Vinci surgical robot.

9 What's your understanding of the type of
10 training that's required before a surgeon can
11 perform a procedure using the da Vinci surgical
12 robot?

13 A. I am not familiar with what equips a
14 surgeon to perform a clinically safe surgery with
15 the da Vinci surgical robot.

16 Q. Are you aware of any other minimally
17 invasive soft tissue surgical robots that surgeons
18 are training on at the same rate that they're
19 training on the da Vinci surgical robot?

20 A. I am not aware of any others.

21 Q. I'm going to show you the next slide. This
22 is Slide Number 28. It's titled "da Vinci Xi is
23 helping accelerate colorectal MIS adoption."

24 Do you see that?

25 A. Yes, I see the slide.

1 Q. I'm actually going to move back to the
2 previous slide really quickly and look at the graph
3 with you. You see that this graph is titled -- and
4 I can zoom in.

5 This graph is titled, "Hernia procedure
6 growth using da Vinci surgical systems"?

7 A. Yes.

8 Q. You see that the hernia procedure growth
9 is -- withdrawn.

10 Do you see that there's been growth in the
11 volume of hernia procedures using da Vinci surgical
12 systems from quarter one of 2013 to quarter two of
13 2018?

14 A. That is correct.

15 Q. I'm going to zoom out and go to the next
16 slide with you.

17 Now, on this slide do you see that it
18 reads, "Approximately one in two colorectal surgeons
19 are using da Vinci systems in the United States"?

20 A. Yes.

21 Q. Are you aware of any other minimally
22 invasive robotic -- withdrawn.

23 Are you aware of any other minimally
24 invasive surgical robot with that widespread of a
25 level of adoption in the United States?

1 A. I am not.

2 Q. Do you see that below -- withdrawn.

3 There's also a portion of this slide where
4 it says, "Approximately 83 percent of 2017 to 2018
5 colorectal fellows were trained on da Vinci
6 systems."

7 Do you see that?

8 A. Yes, I do.

9 Q. Then below that it says, "The average
10 colorectal fellow completes 25 da Vinci
11 robotic-assisted cases during their fellowship."

12 Do you see that?

13 A. I do see that.

14 Q. Is it your understanding that that means
15 that colorectal fellows have to complete --
16 withdrawn.

17 Are you aware of any other minimally
18 invasive robotic surgery system that has the same
19 level of training for colorectal fellows in the
20 United States?

21 A. While I'm not deeply familiar with the
22 subject matter and this is outside of my area of
23 expertise, I am not aware.

24 Q. This slide says, "The average colorectal
25 fellow completes 25 da Vinci robotic-assisted cases

1 during their fellowship." Does that mean that the
2 average colorectal fellow has to perform 25 da Vinci
3 robotic-assisted surgeries before they can actually
4 use the da Vinci system in surgery?

5 A. I do not believe that's what that means.

6 Q. What is your understanding of what that
7 means?

8 A. My understanding is that it is a data point
9 simply indicating the level of exposure and/or
10 experience during one's fellowship.

11 Q. And it indicates that there's a high level
12 of exposure during fellowship to da Vinci surgical
13 technology; right?

14 MS. LENT: Object to the form.

15 THE WITNESS: Could you clarify what's
16 meant by "a high level"?

17 BY MR. ERWIG:

18 Q. Well, 83 percent of colorectal fellows,
19 would you call that a high level of exposure to the
20 da Vinci system, a medium level, or a low level?

21 MS. LENT: Object to the form.

22 THE WITNESS: I'm not certain I'm equipped
23 to respond to that as it relates to medical school
24 thresholds with technological familiarity.

25 ///

1 BY MR. ERWIG:

2 Q. Well, sir, are you aware that there are --
3 withdrawn.

4 Are you aware that the TransEnterix
5 Senhance is a surgery robot that has received FDA
6 clearance in some of the areas that the da Vinci Xi
7 has clearance in?

8 A. I am aware that it is an FDA-cleared
9 medical device.

10 Q. Do you have any sense of what percentage of
11 colorectal fellows are trained on the TransEnterix
12 Senhance?

13 A. I would not know.

14 Q. Is it less than 83 percent?

15 MS. LENT: Objection. Lacks foundation.

16 THE WITNESS: I don't have familiarity with
17 that.

18 BY MR. ERWIG:

19 Q. I'm going to stop screen sharing this
20 exhibit.

21 Now, sir, I want to talk to you a little
22 bit about the development of the da Vinci surgical
23 robots. You have some familiarity with the
24 development process of the da Vinci surgical robots
25 before they were brought to market?

1 A. I have some familiarity with Intuitive's
2 product development process.

3 Q. Can you just describe in general terms what
4 that product development process looks like?

5 A. In general terms, it starts with a need or
6 opportunity to develop better tools or technology in
7 furtherance of your mission and explores engineering
8 and technical feasibility of various solutions and
9 then explores the actual pathway for developing the
10 product itself in terms of concepts, beta systems,
11 et cetera, testing and proving claims associated
12 with the benefits of that product, moving into the
13 regulatory environment for clearances and
14 requirements for regulatory approval to market and
15 sell the products.

16 Q. What is your understanding of how long that
17 process that you just described was for the da Vinci
18 Si robot?

19 A. The development of the da Vinci Si preceded
20 my employment with Intuitive, and I don't have
21 familiarity with that timeline.

22 Q. How about the da Vinci Xi?

23 A. A large portion of that development, I
24 believe, preceded my employment with Intuitive, as
25 it was introduced slightly less than one year

1 following joining the company.

2 Q. You're aware that the development time for
3 each of those robots was over five years; right?

4 A. I am not aware that I can commit to that
5 understanding.

6 Q. Do you have any general sense of the length
7 of time that's required to bring a surgical robot to
8 market?

9 A. Could you clarify if there is existing
10 technology that the platforms are built off of or if
11 this is from scratch?

12 Q. Well, I'm just trying to get a sense of
13 your understanding, sir, at your position at
14 Intuitive what the timeline is for developing a new
15 da Vinci surgical system.

16 A. I believe the timeline could range broadly
17 depending on the scope, function, features, claims,
18 et cetera, of the product.

19 Q. You imagine there's a broad range. Can you
20 give me a little bit narrower sense of that range?

21 A. I would -- I believe, for example, with the
22 da Vinci X product -- I'll provide clarity within
23 that range.

24 The da Vinci X product, which is a
25 fourth-generation platform product, so an additional

1 model within the same generation of robots, as an
2 example, required less time to develop than the
3 da Vinci Xi, which was the first robot within the
4 fourth-generation platform.

5 Q. Now, you mentioned less time, but I'm just
6 trying to get a little bit concrete when you
7 mention.

8 Less time, is that, you know, two years
9 instead of four years? Is that three years instead
10 of seven years? Any sort of a more granular level
11 of detail?

12 MS. LENT: Object to the form.

13 THE WITNESS: I don't know that I can
14 provide a more granular level of detail.

15 BY MR. ERWIG:

16 Q. So the level of detail that you have is
17 that the X, that took less time to develop than the
18 Xi; is that right?

19 A. That is correct.

20 Q. Now, before the Xi entered the market,
21 there were some steps that had to be taken; right?

22 A. Correct.

23 Q. There was some capital expenditures and
24 money investment involved in the research and
25 development for the Xi; right?

1 A. That is correct.

2 Q. There was some testing that was done?

3 A. That is correct.

4 Q. And there was some paperwork submitted to
5 the FDA; right?

6 A. That is correct.

7 Q. It's not a simple or a straightforward
8 process to get that new robot approved; right?

9 MS. LENT: Object to the form.

10 THE WITNESS: I'm not familiar with the
11 extent of the process that regulatory clearance
12 takes either with the FDA or notified bodies, but I
13 do know that the process is extensive.

14 BY MR. ERWIG:

15 Q. Extensive -- it's extensive -- withdrawn.

16 That process is extensive, and it's
17 challenging as well; right?

18 MS. LENT: Object to the form.

19 THE WITNESS: Could you clarify what you
20 mean by "challenging"?

21 BY MR. ERWIG:

22 Q. Well, it's not easy. It takes a lot of
23 time, it takes a lot of work, and it takes a lot of
24 effort; right?

25 MS. LENT: Object to the form.

1 THE WITNESS: I would state that adhering
2 to the regulatory requirements, generating the
3 appropriate level of data, et cetera, it does take
4 time and effort.

5 BY MR. ERWIG:

6 Q. And more than just regulatory requirements,
7 the actual development of the surgical robot, that
8 takes a lot of time; right?

9 A. That would be correct.

10 Q. It takes a lot of resources too in terms of
11 money that you have to invest into the research and
12 development process; right?

13 MS. LENT: Object to the form.

14 THE WITNESS: It does take resources and
15 expertise, correct.

16 BY MR. ERWIG:

17 Q. A significant amount of resources; right?

18 MS. LENT: Object to the form.

19 THE WITNESS: Could you clarify the level
20 of materiality associated with "significant"?

21 BY MR. ERWIG:

22 Q. Tens of millions of dollars; right?

23 A. I would estimate yes.

24 Q. In the upper tens of millions of dollars;
25 right?

1 MS. LENT: Objection. Vague.

2 THE WITNESS: I would say it depends to my
3 previous comments on the scope of the product, the
4 predicate technologies, et cetera.

5 BY MR. ERWIG:

6 Q. So the whole process of developing and
7 bringing a surgical robot to market, that isn't
8 easy; right?

9 MS. LENT: Objection.

10 THE WITNESS: Could you clarify what you
11 mean by "easy"?

12 BY MR. ERWIG:

13 Q. Well, maybe we can use a document and it
14 will make things a little more concrete.

15 I'm going to screen share our next exhibit.
16 This will be 7'17'20, Bair to others. So this will
17 be Plaintiff's Exhibit 4.

18 (Marked for identification purposes,
19 Exhibit 4.)

20 BY MR. ERWIG:

21 Q. You see this on the screen in front of you?

22 A. Yes, I do.

23 Q. I'll point your attention to the bottom
24 e-mail. Do you recognize that e-mail?

25 A. Yes.

1 Q. How is it that you recognize it?

2 A. I authored the e-mail at the bottom.

3 Q. The -- I'm sorry. I didn't mean to cut you
4 off.

5 A. No, I completed my sentence.

6 Q. Does the bottom e-mail appear to be an
7 e-mail from yourself to others at Intuitive Surgical
8 sent on Friday, July 17th, 2020?

9 A. Yes, it does.

10 Q. In that e-mail you write, "Team, in case
11 the news hadn't reached you yet, J&J announced a
12 significant delay in their competitive program, and
13 the FDA apparently plans a much more stringent
14 approval process for new entrants into the robotic
15 space."

16 Do you see that?

17 A. I do.

18 Q. What do you mean by "a significant delay in
19 their competitive program"?

20 A. A delay in the product to pipeline
21 associated with products they are developing which
22 we believe will compete in the same -- continue to
23 compete in the same space.

24 Q. Well, you link an article in your e-mail;
25 right?

1 A. That is correct.

2 Q. That's an article from massdevice.com. Do
3 you see that?

4 A. I do.

5 Q. And it says "Johnson & Johnson to take its
6 time on general surgery robot."

7 Do you see that?

8 A. Yes.

9 Q. Is the general surgery robot the
10 competitive program that you're referencing in your
11 e-mail?

12 A. I wouldn't refer to the Johnson & Johnson
13 robot as necessarily a general surgery robot. That
14 title was provided by the author of that article.
15 But I was speaking more specifically regarding to
16 surgical robotics or robotic-assisted surgery.

17 Q. Now, at the bottom of this e-mail you
18 write, "Yet another reminder what we do isn't easy."

19 Do you see that?

20 A. That is correct.

21 Q. And when you say "what we do," that means
22 what Intuitive does; right?

23 A. That is correct.

24 Q. What Intuitive does is develop and bring to
25 market minimally invasive robots for minimally

1 invasive surgeries; right?

2 A. Generally, yes, that is the business we are
3 engaged in.

4 Q. It's not easy to be engaged in that
5 business; right?

6 A. It is a -- that is correct.

7 Q. There's difficulties for even a company as
8 big as Johnson & Johnson to enter into that space;
9 right?

10 A. I would agree that the same difficulties
11 that we encounter are often shared by other
12 companies.

13 Q. Well, sir, Intuitive has a minimally
14 invasive -- withdrawn.

15 Intuitive has multiple minimally invasive
16 robots on the market with FDA clearance; right?

17 A. That is correct.

18 Q. Johnson & Johnson has none; right?

19 A. I am not certain as I know there are some
20 orthopedic robots. And Johnson & Johnson, I
21 believe, has also acquired an endoluminal robotic
22 surgery robot as well.

23 Q. Well, Johnson & Johnson doesn't have a
24 competitive robot with a da Vinci robot in minimally
25 invasive soft tissue surgeries; right?

1 MS. LENT: Object to the form.

2 THE WITNESS: I do not believe that they
3 have an approved medical device for soft tissue
4 surgery similar to a da Vinci-type product.

5 BY MR. ERWIG:

6 Q. And developing a surgical robot like that,
7 that isn't easy; right?

8 A. I do not believe that to be easy.

9 MR. ERWIG: Let me stop screen sharing this
10 exhibit.

11 BY MR. ERWIG:

12 Q. Are you aware, sir, that Intuitive's
13 da Vinci surgical robots make up over 99 percent of
14 the installed minimally invasive soft tissue
15 surgical robots in the United States?

16 A. I am not aware of that as I do not have an
17 understanding of the installed base for other
18 surgical robots.

19 Q. Do you have any understanding of any other
20 installed surgical robots?

21 A. I do have some high-level understanding,
22 yes.

23 Q. Can you explain to me your high-level
24 understanding?

25 A. I believe, as I mentioned, there is a

1 Monarch product. I am familiar with the
2 TransEnterix Senhance, a very high-level
3 familiarity. It may have recently been renamed.

4 And then I'm familiar with, for example,
5 the Mako robotic platform for non-soft tissue
6 surgery, hips, I think, knees, et cetera.

7 Q. I want to focus in with you on the
8 minimally invasive soft tissue surgery market.

9 What robots are you aware of that have FDA
10 approval in that area?

11 A. I am aware --

12 MS. LENT: Objection.

13 Hold on a second, Ron.

14 Objection. Legal conclusion.

15 THE WITNESS: I am aware of -- as I
16 mentioned, I believe that the TransEnterix robot has
17 FDA clearance to be marketed and sold in the United
18 States.

19 BY MR. ERWIG:

20 Q. Any others that you're aware of?

21 A. That have clearance? I do not believe
22 there are others that I'm aware of.

23 Q. I want to turn to a slightly different
24 topic with you. I understand that at one point you
25 were involved in studying the feasibility of

1 refurbishing EndoWrist instruments. Is that right?

2 A. That is correct.

3 Q. I just want to get a little bit of a
4 high-level sense of how that refurbishment process
5 works.

6 Now, sir, EndoWrists have something called
7 a use counter; is that right?

8 A. They do have the ability to register when a
9 surgical procedure life, as we would call it, has
10 been used, that is correct.

11 Q. And Intuitive refers to -- the counting of
12 surgical procedures, Intuitive refers to that as a
13 use counter; right?

14 A. I don't generally refer to it as that, but
15 others may.

16 Q. One of the things that each EndoWrist is
17 capable of doing is, when the use counter hits zero,
18 it won't function with the da Vinci surgical robot
19 anymore; is that right?

20 A. I believe that to be true.

21 Q. And in some instances the EndoWrists, they
22 may fail before that use counter is up as well;
23 right?

24 A. In some instances, that is correct.

25 Q. And failure of that can be a number of

1 different things; right?

2 A. That is correct.

3 Q. One of the reasons an EndoWrist could fail
4 is that the cables might become loose; right?

5 A. That is correct.

6 Q. Another way an EndoWrist could fail is if
7 the scissors at the tip of that EndoWrist, if they
8 get dull; right?

9 A. That is correct.

10 Q. Another way an EndoWrist could fail is if
11 the graspers on the tip of an EndoWrist, if those
12 become misaligned; right? That's another way an
13 EndoWrist can fail?

14 A. Yes. Bent, which would cause misalignment.

15 Q. What was the purpose of studying --
16 withdrawn.

17 And a refurbishing program would collect
18 and repair those EndoWrists back to normal
19 specifications; right?

20 A. I wouldn't use the term "repair" as it
21 relates to our process.

22 Q. Well, one part of the process was
23 collecting EndoWrists that had failed from
24 customers; right?

25 A. We explored a potential process as it

1 related, correct, to collecting or reclaiming

2 instrumentation that had reached its useful life.

3 Q. Right. As part of that process, you would

4 collect those instruments from customers; right?

5 A. That is correct. From customers or another

6 collection process.

7 Q. And then you wouldn't just throw those

8 instruments away; right? You would refurbish them

9 to be sold again; right?

10 A. That is correct.

11 Q. By refurbishing, that means restoring the

12 instrument to a state as good as new; right?

13 A. That is correct.

14 Q. In fact, Intuitive wanted to market the

15 refurbished instruments as equivalent in

16 performance, safety, and efficiency to new

17 EndoWrists; right?

18 MS. LENT: Object to the form.

19 THE WITNESS: I believe our intent would

20 have been to ensure that the refurbished

21 instrumentation would be equivalent to new.

22 BY MR. ERWIG:

23 Q. Well, sir, that wasn't just the intent;

24 right? There was tests that were performed by

25 Intuitive; right?

1 MS. LENT: Object to the form.

2 THE WITNESS: I would clarify that the
3 tests were performed pursuant to the intent of the
4 objective.

5 MR. ERWIG: Well, let's screen share a
6 document and see if we can get a little more
7 specific.

8 The next exhibit will be in Folder 2. This
9 is 1'30'17, "Instrument Refurbishment Feasibility
10 Update." I'll screen share with you and give you a
11 second to pull it up.

12 THE STENOGRAPHER: So this is Exhibit 5?

13 MR. ERWIG: Exhibit 5, yes.

14 (Marked for identification purposes,
15 Exhibit 5.)

16 THE WITNESS: Okay.

17 BY MR. ERWIG:

18 Q. Do you have this on the screen in front of
19 you, Mr. Bair?

20 A. Yes, I do.

21 Q. Do you recognize this document?

22 A. Allow me a moment to refresh, please.

23 Yes, I generally recognize the document.

24 Q. How do you recognize it?

25 A. I was present for its presentation, and I

1 helped compile or contribute to certain components
2 of the document.

3 Q. Did you yourself, in fact, present part of
4 this instrument refurbishment feasibility update?

5 A. I believe that I did present part of the
6 presentation.

7 Q. Turn your attention to Slide 2. This is a
8 slide titled Feasibility Team? Do you see that?

9 A. Yes, I do.

10 Q. And you're listed on that slide; right?

11 A. That is correct.

12 Q. What is the feasibility team?

13 A. It is a cross-functional team that, to my
14 recollection, was formed to evaluate whether or not
15 we could safely rebuild or refurbish instruments
16 that were reclaimed from customers following the
17 expiration of their useful original lives.

18 Q. The purpose of this instrument
19 refurbishment study was to examine the impact of
20 refurbishing EndoWrists; right?

21 A. I do not agree with that statement.

22 Q. Well, sir, you wanted to determine whether
23 it was possible to safely refurbish EndoWrists;
24 right?

25 A. That is correct.

1 Q. You wanted to determine what the financial
2 impact would be to Intuitive of refurbishing
3 EndoWrists as well; right?

4 A. That is correct.

5 Q. I'm going to turn to Slide 10 with you,
6 which is titled "Instrument Refurbishment Program
7 Benefits."

8 Do you see that?

9 A. One moment. Yes.

10 Q. And there's a description which reads,
11 "Reclaim expired instruments for the purpose of
12 remanufacturing and recertifying to original
13 performance specifications."

14 Do you see that.

15 A. Yes, I do.

16 Q. Now, an expired instrument, that would be
17 an instrument whose -- withdrawn.

18 An expired instrument would be an EndoWrist
19 whose use counter has reached zero; right?

20 A. That is correct.

21 Q. An expired instrument might also be an
22 instrument that failed before reaching zero on the
23 use counter; right?

24 A. I do not believe that classifies as an
25 expired instrument.

1 Q. Now, under the first column here, it reads
2 "Clinical Performance."

3 Do you see that?

4 A. Yes.

5 Q. And the first bullet says "Equivalent
6 Performance."

7 Do you see that?

8 A. Yes.

9 Q. Second bullet reads, "Ten lives per
10 instrument."

11 Do you see that?

12 A. Yes.

13 Q. And the third reads, "Equivalent cleaning
14 and sterilization process."

15 Do you see that?

16 A. Yes.

17 Q. Was it your understanding that refurbished
18 instruments could offer equivalent performance to
19 new instruments?

20 MS. LENT: Object to the form.

21 THE WITNESS: Following certain robust
22 remanufacturing or refurbishment techniques,
23 including the replacement of components, we did deem
24 that it was likely feasible, although we did not
25 undertake a full validation and verification of

1 refurbished or remanufactured instruments.

2 BY MR. ERWIG:

3 Q. You certainly didn't conclude that
4 refurbishment was not possible; right?

5 A. That is correct.

6 Q. I'm going to move to Slide 18 with you.
7 And this is a slide that's titled "Financial and
8 Logistics Assessment." It has your name on it.

9 Do you see that?

10 A. Yes, I do.

11 Q. What is meant by financial and logistics
12 assessment?

13 A. So you mentioned it previously, but
14 examining the financial impacts as it relates to the
15 cost of the instruments themselves following the
16 refurbishment, as well as the logistics and/or
17 supply chain implications of reclaiming --
18 harvesting components, rebuilding, et cetera.

19 Q. One thing that a financial assessment
20 includes is whether it's more or less profitable for
21 Intuitive to offer remanufactured or refurbished
22 EndoWrists; right?

23 A. That is commonly an element of financial
24 analysis, yes.

25 Q. And that was certainly an element of this

1 financial analysis; right?

2 A. The focus of this financial analysis was
3 more on the cost element of it and less on
4 profitability.

5 Q. Well, sir, you certainly wanted to know if
6 Intuitive would gain or would lose money when you
7 were considering whether to refurbish EndoWrists;
8 right?

9 A. That is correct.

10 Q. You were interested in whether it was more
11 profitable to offer refurbished EndoWrists or to not
12 offer a program like that at all; right?

13 A. That is one element of what we were
14 attempting to explore or assess.

15 Q. That's specifically the element that you
16 were presenting on in this PowerPoint; right?

17 A. That is one of the elements that we
18 explored, yes.

19 Q. I'm going to move to Slide 20 with you
20 where it reads "Financial Analysis."

21 Do you see that?

22 A. That is correct.

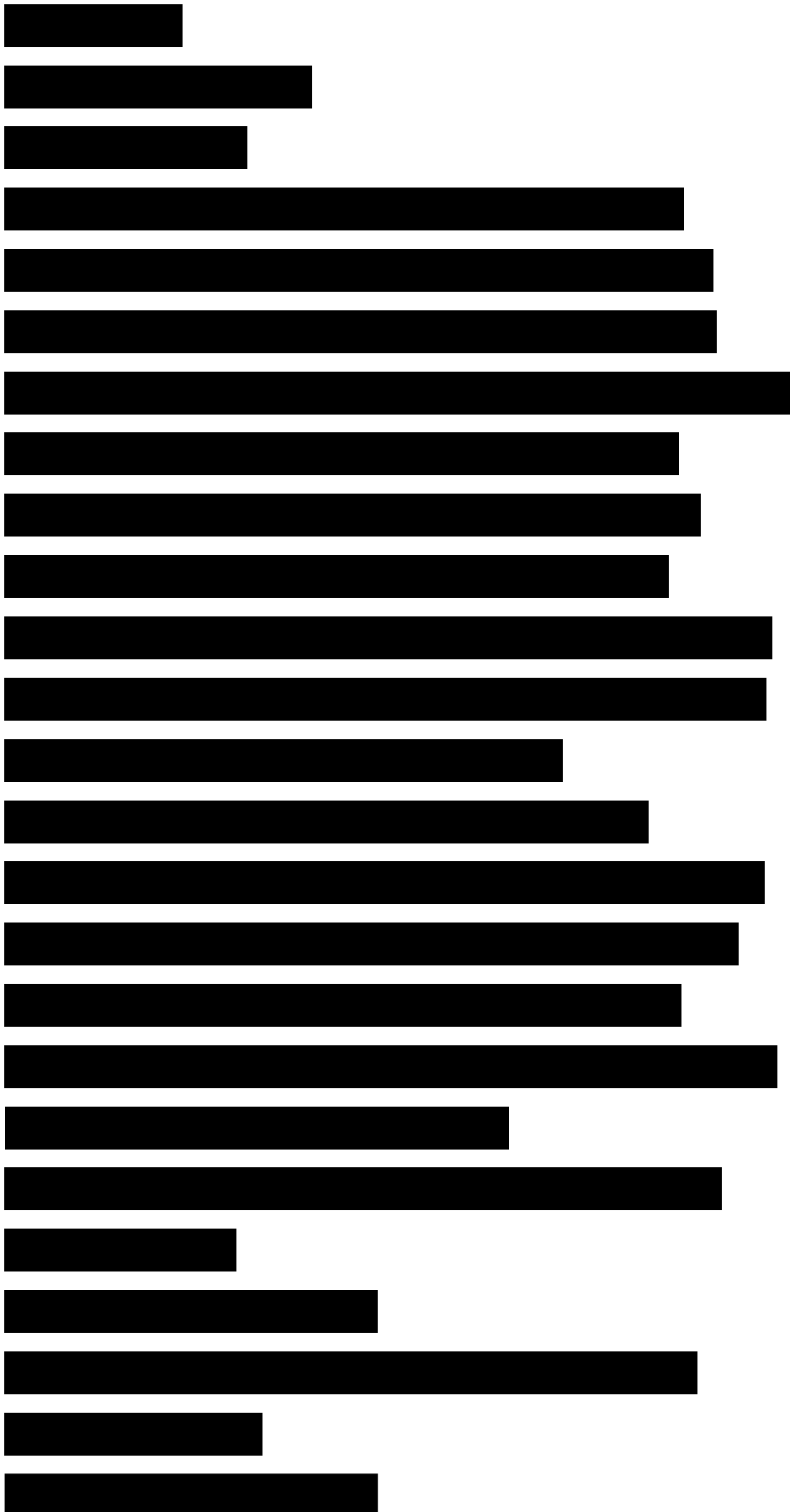
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A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with the second bar from the top being the longest and the 19th bar being the shortest. The lengths of the bars vary significantly, creating a jagged profile. The bars are set against a white background with no visible grid lines or labels.

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with the longest bar in the center and the shortest bars at the top and bottom. The lengths of the bars vary significantly, creating a dynamic visual pattern. The bars are all solid black and have no text or labels associated with them.



A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with the longest bar in the center and the shortest bars at the top and bottom. The lengths of the bars vary significantly, creating a dynamic visual pattern.

22 Q. I'm going to move to Slide 22 with you.

23 You see that this is a slide titled "Technical

24 Assessment"?

25 A. Yes.

1 Q. And there's a summary listed. Do you see
2 that?

3 A. Yes.

4 Q. That summary lists in the first bullet
5 point "Confirmed feasibility of ten plus lives on
6 FBF, LND, and ProGrasp."

7 Do you see that?

8 A. Yes.

9 Q. What does "confirmed feasibility of ten
10 plus lives" mean?

11 A. With the proposed refurbishment of the
12 instruments. So the deconstruction and replacement
13 of wear components, retest, et cetera, if certain
14 components were replaced as part of the
15 remanufacturing and certain components were tested
16 and reused, if deemed to be equivalent or better
17 than new, that it was feasible to reuse some
18 components for an additional ten lives within a
19 rebuilt or refurbished instrument.

20 Q. Well, this doesn't say confirmed
21 feasibility of ten lives. This says confirmed
22 feasibility of ten plus lives; right?

23 A. That is correct.

24 Q. So those refurbished instruments might be
25 capable of being used for more than ten lives;

1 right?

2 A. It may be possible, but that -- the reason
3 I believe that ten plus lives was put in there is
4 because there are some instruments that have longer
5 than ten lives on their life counter that Intuitive
6 sells. And then, in addition to that, it would take
7 quite a bit of validation and verification to
8 rebuild the instruments and test them to failure,
9 assess those failure modes, and then discern what
10 the life -- reasonably validated life limit was such
11 that we had a high degree of certainty that within
12 that life limit the instrument would perform
13 clinically as designed and safely.

14 Q. Now, the process for refurbishing
15 instruments, that might differ from instrument to
16 instrument; right?

17 A. That is correct.

18 Q. For one instrument, for example, you might
19 just have to realign graspers and tighten cables for
20 that instrument. That's one potential way you could
21 refurbish an instrument; right?

22 MS. LENT: Object to the form.

23 THE WITNESS: As we did not complete
24 refurbishment, a validation -- full validation and
25 verification, I don't know that I could speak to

1 that.

2 BY MR. ERWIG:

3 Q. Well, in this technical assessment you
4 certainly looked at whether it was feasible to
5 refurbish instruments such that they could perform
6 equivalent to new instruments; right?

7 A. That is correct, but I would refer to the
8 previous slide that we were looking at that had
9 various levels of assessment as it related to
10 component reuse ranging from 50 percent of component
11 reuse to 25 percent of component reuse. And I do
12 not believe that any element of our refurbishment
13 included bending tips to realign them.

14 Q. Well, at any point -- withdrawn.

15 At any point during the instrument
16 refurbishment feasibility study in 2017, did you
17 conclude that it was not possible to repair or
18 refurbish EndoWrist instruments?

19 MS. LENT: Object to the form. Compound.

20 MR. ERWIG: I'll break it down.

21 BY MR. ERWIG:

22 Q. Mr. Bair, at any point during the 2017
23 instrument refurbishment feasibility update, did you
24 conclude that it was not possible to refurbish
25 EndoWrists?

1 A. I would speak more narrowly to the
2 EndoWrist instruments that we examined, given that
3 we did not test the -- or experiment as it related
4 to the feasibility for the entire suite of
5 instruments, but we did find as referenced, I
6 believe, previously in this document, including in
7 that top line, that we did confirm that there was
8 a -- that methodologies could be undertaken to
9 replace components and refurbish or remanufacture
10 the instrument.

11 Q. During this process did you test whether it
12 was possible to repair the EndoWrists that you
13 reclaimed from hospitals?

14 A. Could you articulate? I know that the
15 words in this space are challenging, especially as
16 related to the various regulatory definitions for
17 repair, refurbishment, servicing, remanufacturing,
18 et cetera.

19 Would you mind clarifying the scope of the
20 term "repair."

21 Q. Sure. Collecting an instrument and not
22 exchanging replacement parts and servicing the
23 instrument.

24 A. We did not determine that it was feasible
25 to -- given that definition of repair, we did not

1 find feasibility.

2 Q. Did you do any studies on that at all?

3 A. We, to my recollection, as part of the
4 initial verification, drove -- or used instruments
5 in excess of their ten-life count. And I believe in
6 almost all instances, the instruments failed
7 prematurely before they reached an additional ten
8 lives.

9 Q. When you mentioned "we used instruments in
10 addition to the life count," that's using
11 instruments without any sort of repair or
12 refurbishment after their ten-life use count had
13 expired; right?

14 A. I believe there were certain servicing
15 activities that were undertaken. For example, that
16 may include maintenance that a user could perform or
17 might entail lubrication or appropriate cleaning and
18 sterilization, et cetera, in advance of that
19 additional life testing.

20 Q. Are there any documents that you could
21 point to that would reflect that initial effort of
22 study the continued use of EndoWrists with repairs
23 or servicing?

24 A. I was not engaged in the technical
25 assessment details, and so I don't know that I would

1 have or could point to that sort of documentation.

2 Q. Let me go to page 24 with you. This is a
3 slide that reads "Technical Assessment."

4 Do you see that?

5 A. Yes.

6 Q. And then there's a second bullet where it
7 says RMA instruments. Do you see that?

8 A. Yes.

9 Q. What is an RMA instrument?

10 A. It is a return material authorization
11 instrument. So that would be an instrument that
12 our -- one of our customers would have logged a
13 complaint against and received a -- what we call an
14 RMA number for us so that we could track the receipt
15 of that instrument, perform failure analysis on the
16 instrument to potentially replicate the complaint,
17 determine if it was reportable or nonreportable, and
18 notify the appropriate bodies as well as inform our
19 quality and manufacturing practices if needed.
20 Ultimately, that would include a credit to the
21 customer if it was found to be a warranty or
22 manufacturing defect that induced the failure in the
23 instrument.

24 MR. ERWIG: I'll stop screen sharing this
25 exhibit.

1 Let's go off the record, and we'll take a
2 quick break.

3 THE WITNESS: Sure.

4 THE VIDEOGRAPHER: The time is 1:57 p.m.,
5 and we are off the record.

6 (Recess taken from 1:58 to 2:10.)

7 THE VIDEOGRAPHER: The time is 2:10 p.m.
8 and we are back on the record.

9 BY MR. ERWIG:

10 Q. Now, Mr. Bair, what was your understanding
11 of the purpose of studying a refurbished EndoWrist
12 program?

13 A. I'm aligned to the objectives that were
14 previously stated within the document that we
15 reviewed a moment ago. And there was an element of
16 environmental and social responsibility as it
17 relates to reusing components to reduce waste, but
18 more so it was to explore if there were
19 opportunities to reduce the costs associated with
20 manufacturing these instruments such that we could
21 potentially provide better solutions for more
22 price-sensitive or cost-sensitive surgical
23 procedures that may be amenable to a
24 robotic-assisted surgical intervention.

25 Q. Did Intuitive, in fact, bring a refurbished

1 EndoWrist program to market?

2 A. We did not.

3 Q. Why not?

4 A. After following the feasibility assessment
5 that we explored, we determined that that would not
6 be a product priority at that point in time. And so
7 we stopped for the time being. I believe that
8 presentation was 2017. And we didn't pursue that as
9 a component of the portfolio at that time.

10 Q. Did Intuitive pursue that at any time
11 since?

12 A. We periodically and regularly reassess our
13 multiyear portfolio and product road map planning,
14 which is the projection of what products should we
15 investigate and/or develop and try to bring to
16 market at what times given that we're working with
17 constrained resources.

18 And so I -- I would expect that a potential
19 feasibility or the subject matter has been explored
20 since then.

21 Q. You mentioned that refurbished instruments
22 were -- I believe the term you used was product
23 priority. Is that right?

24 A. A product development priority for the
25 company at the time, that is correct.

1 Q. What sort of factors go into determining
2 whether something is a product development priority
3 for Intuitive?

4 A. I would say a pretty complex conversation
5 that's held largely at levels far above where I am
6 at. So I don't know that I could articulate or
7 stipulate what each of those requirements would be
8 in terms of what gets funded and what doesn't. But
9 it has to do with the effective usage of our
10 resources and what can most effectively help us
11 achieve our objectives at the end of the day.

12 Q. Sir, you understand that lower-priced
13 EndoWrists would be very attractive to hospitals
14 that are using da Vinci surgical robots; right?

15 A. I don't know that I can speak on behalf of
16 the procurement organizations for hospitals, but I
17 do know that part of our objective was to achieve a
18 lower cost profile so that we could pass -- then
19 pass that lower cost profile on to our customers.

20 Q. And the point at which the study was at had
21 confirmed the title of refurbished EndoWrists;
22 right?

23 A. I would not say that it confirmed the
24 feasibility. It confirmed that we didn't initially
25 through our high-level, very small-scale

1 investigation, we explored or found that it wasn't
2 impossible is what we concluded from that. But as
3 referred to and mentioned in the financial analysis,
4 as I noted, that there was a range of example
5 material harvesting from instruments, and as such at
6 that time we had not established what exactly it
7 would take to render the instrument clinically safe
8 and equivalent or better than new.

9 Q. And Intuitive didn't continue with that
10 process of bringing refurbished EndoWrists to
11 market; right?

12 A. We did not continue at that time, that is
13 correct.

14 Q. And at any time since; right? If a
15 hospital wants to buy a refurbished instrument from
16 Intuitive today, they can't do that; right?

17 A. Not that I am aware of.

18 Q. So the hospitals, they have to buy
19 full-priced new instruments from Intuitive; right?

20 A. I'll give you an example of a trade-off
21 related to your earlier question. So pursuing
22 various routines to reduce the cost implications of
23 robotic-assisted surgery, there is a real-world
24 example of the extended-life instruments that were
25 recently introduced. And given that we were looking

1 to pursue what has the greatest impact, we did not
2 pursue instrument reclamation and refurbishment at
3 the time; however, we did launch an extended-life
4 instrument program.

5 Q. Sir, that's not quite my question. So
6 we'll get into extended-use instruments, but right
7 now I'm just looking at refurbished instruments or
8 new instruments. So withdrawn.

9 In today's marketplace a hospital has to
10 buy a new instrument from Intuitive when its old
11 instruments expire; right? Can't buy a refurbished
12 one?

13 MS. LENT: Object to the form.

14 THE WITNESS: Yeah, could you -- are there
15 two questions there or just one question?

16 BY MR. ERWIG:

17 Q. Just one question. Hospitals can't buy
18 refurbished EndoWrists from Intuitive; true?

19 A. A hospital -- that is true -- cannot buy a
20 refurbished EndoWrist instrument from Intuitive, to
21 my understanding.

22 Q. And Intuitive hasn't invested in trying to
23 bring less expensive refurbished instruments to
24 market; right?

25 MS. LENT: Object to the form.

1 THE WITNESS: I no longer have purview to
2 our product development -- excuse me -- product
3 development investments within that organization.
4 And so I don't know that I can speak to that.

5 BY MR. ERWIG:

6 Q. Well, what's your personal knowledge of any
7 refurbished instrument programs in development by
8 Intuitive?

9 A. Sure. So consistent with my previous
10 answer as it relates to the periodic reevaluation of
11 products within our projected road map or pipeline
12 in align -- aligned with our strategic gains, I
13 suspect that refurbishment or reclamation would
14 continue to be a potential matter of discussion
15 within those forums.

16 Q. Well, you suspect, but my question is do
17 you have any personal knowledge about any current
18 initiatives being undertaken at Intuitive on the
19 specifics?

20 A. I'm unaware of any current initiatives. I
21 am aware of the ongoing product road map
22 conversations, as I mentioned.

23 MR. ERWIG: I'm going to screen share our
24 next exhibit. This will be Plaintiff's Exhibit 6.
25 This is in Folder 2. This is 6'21'17 Bair to

1 Rozynski. Screen share this with you.

2 (Marked for identification purposes,

3 Exhibit 6.)

4 BY MR. ERWIG:

5 Q. Do you see this on the screen in front of

6 you, Mr. Bair?

7 A. Yes, I do.

8 Q. Do you recognize this?

9 A. I don't know that there's enough detail for

10 me to recall it, but Summit does not ring a bell

11 initially.

12 Q. Does this appear to be an e-mail from

13 yourself to Daniel Rozynski at Intuitive Surgical

14 and Bastien Thomet at Intuitive Surgical?

15 A. Yes, it does.

16 Q. And the subject is Summit - Biz Case

17 Competition.pptx. Do you see that?

18 A. Yes, that is correct.

19 MR. ERWIG: I'm going to stop screen

20 sharing this exhibit.

21 Our next exhibit will be the attachment to

22 that e-mail. This is 6'21'17 Attach to Bair to

23 Rozynski. This will be Exhibit 7.

24 (Marked for identification purposes,

25 Exhibit 7.)

1 BY MR. ERWIG:

2 Q. Do you see this on the screen in front of
3 you?

4 A. Yes, I do.

5 Q. Do you recognize this?

6 A. Potentially. I probably -- I mean, we --
7 we have a lot of similar cover pages. So if I could
8 be allowed to review the contents, I might recognize
9 it to a greater extent.

10 Q. Sure.

11 A. This is 43051, 6'21'17; is that correct?

12 Q. That's correct.

13 A. Yes, I do recall this.

14 Q. How is it that you recall it?

15 A. We were having a leader -- to the best of
16 my recollection, knowing that this was several years
17 ago, we did a leadership development or leadership
18 training initiative within the finance team, if I
19 recall correctly. Allow me a moment to explore a
20 little further.

21 Yes, my recollection is accurate. We did a
22 business case team-building exercise where various
23 teams within the finance organization were tasked to
24 go and find an experimental or exploratory
25 opportunity to dynamically change the business and

1 make a business pitch similar to what you would do
2 in business school with a business case scenario.

3 Q. One of the things on page 2 is a
4 document -- withdrawn -- a slide titled "Our Pitch."

5 Do you see that?

6 A. That is correct.

7 Q. You tiled this slide "Our Pitch," or did
8 someone else title this slide?

9 A. I don't recall. It was a team exercise. I
10 believe we broke into four or five different teams
11 as part of the training.

12 Q. Did you participate as part of this team
13 that developed the PowerPoint presentation?

14 A. Yes, I did.

15 Q. Now, one of the things that you write in
16 the "Approach -- Flip the Fleet" is there's a bullet
17 point labeled "Phase 1 (years 1-3)."

18 Do you see that?

19 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 What do you mean by the word "Dragon"?

17 A. So Project Dragon was the project name. We
18 periodically have project names related to new
19 products before they come to market or are assigned
20 a customer-facing name. Project Dragon was, to my
21 recollection, the general name for the project to
22 explore the viability of refurbishing or exchanging
23 instruments in this example.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 Q. I'm going to move on to page 6 of this
6 presentation, which is titled "Future of the
7 Footprint."

8 Do you see that?

9 A. Yes.

10 Q. And there's a subheading labeled
11 "Investments." Do you see that?

12 A. Sorry. Where is this? Oh, here. Sorry.
13 I'm on the wrong future footprint slide.

14 Which page are you on now?

15 Q. Page 6.

16 A. Sure.

17 Q. Do you see the subheading titled
18 "Investments"?

19 A. Yes, I do.

20 Q. One of the bullet points under that is
21 "Remanufactured Instruments." Is that right?

22 A. That is correct.

23 Q. As of this time period, were you
24 considering remanufactured instruments as a part of
25 the footprint for the da Vinci surgical robots in

1 the future?

2 A. One moment to recall the date of this
3 presentation, again. It's not on this slide.

4 Could you remind me of the date of that
5 e-mail?

6 Q. June 6th -- withdrawn. June 21st, 2017.

7 A. Okay. Thank you. So mid-2017. At the
8 time I do not believe we were pursuing instrument
9 remanufacturing or refurbishment.

10 And to clarify, again, this was not a
11 formal business proposal. This was an exercise
12 within the context of a training that we were doing
13 in terms of thinking outside the box, putting
14 together a quick business plan. There was a mock
15 panel that this was presented to, along with maybe
16 two or three or four other presentations or
17 proposals from the team. We had a very limited
18 amount of time to put it together. And then I
19 believe the panel voted on who -- whose presentation
20 they thought was the most thoughtful and made sense.

21 So I don't know that I would use this as
22 evidence of intentional directionality as it relates
23 to decision-making within our traditional Intuitive
24 decision-making frameworks, just to provide the
25 appropriate color and context for this presentation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. So it maintained current margins over the
9 da Vinci surgical systems; right?

10 A. It would maintain what we estimated, I
11 think at the time, as the group was close to a rough
12 estimate of the margins of the capital equipment.
13 That is correct.

14 Q. I'm going to stop screen sharing this
15 document.

16 Now, later on in 2017 you did some modeling
17 of what refurbishment would look like as a business
18 model; right?

19 A. I don't recall the exact dates of that.

20 MR. ERWIG: Let's take a look at some
21 documents and see if that helps you. Next exhibit
22 is going to be Plaintiff's Exhibit 8.

23 (Marked for identification purposes,
24 Exhibit 8.)

25 MR. ERWIG: This will be 7'6'17 Goodson to

1 Bair.

2 BY MR. ERWIG:

3 Q. Do you see this on the screen in front of
4 you?

5 A. Yes, I do.

6 Q. Do you recognize this document?

7 A. Roughly, yes, I do recall it.

8 Q. How do you recognize it?

9 A. I seem to recall that at the time I was
10 transitioning the financial analysis and support
11 work to -- I believe he was a new employee or he was
12 new to the function at the time. His name is Ben
13 Bedore. He was on this e-mail. And so I do recall
14 catching him up to speed on the work that we had
15 done within the context of, as I mentioned, the
16 periodic revisiting of our product development road
17 map and expecting that Ben Bedore would -- as the
18 financial picture changes over time, logistics
19 changes over time, et cetera, that he may have to
20 pick up the modeling or the analysis exercise.

21 If I recall correctly, that was the context
22 of this message.

23 Q. You see that there's an attachment titled
24 "Refurb Business Model - minimal.xlsx"?

25 A. Yes.

1 MR. ERWIG: I'm going to take a look at
2 that now. The next exhibit will be Plaintiff's
3 Exhibit 9.

4 (Marked for identification purposes,
5 Exhibit 9.)

6 MR. ERWIG: This will be 7'6'16 Attach to
7 Goodson to Bair. We'll look at the Excel document
8 in a moment, but I just want to show you the way
9 this was produced.

10 BY MR. ERWIG:

11 Q. Do you recognize this document?

12 A. It's too small for me to recognize at face
13 value, but I'm about to pull it up here.

14 Attach to Goodson Bair. Here we go. Yes,
15 I do recall.

16 Q. How do you recognize this?

17 A. I was one of the contributors to this
18 document.

19 MR. ERWIG: I'm going to stop screen
20 sharing this exhibit, and we'll look at the native
21 version in Excel.

22 This will be Plaintiff's Exhibit 10. This
23 will be 7'6'16 Excel attached to Goodson to Bair.

24 (Marked for identification purposes,
25 Exhibit 10.)

1 BY MR. ERWIG:

2 Q. I'm going to screen share this with you as
3 well.

4 Do you see this on the screen in front of
5 you?

6 A. Yes, I do.

7 Q. Does this appear to be the same PDF we just
8 looked at just in --

9 (Stenographer interrupted for clarification
10 of the record.)

11 BY MR. ERWIG:

12 Q. Just in Excel format.

13 A. Would you mind scrolling to the very top of
14 it.

15 Q. This is the top of it. I'm sorry. No,
16 it's not.

17 A. Wow. I just realized this is 166 pages.
18 I'm not going to scroll through all of that.

19 It seems to be representative, yes, of the
20 PDF that we viewed before.

21 Q. There's some tabs on the bottom of this
22 Excel document; right? Including "Consolidated
23 Model," "Instrument Model Est," "Demand Plan," and
24 some others; right?

25 A. That is correct.

1 Q. What is the general information that's
2 contained within this Excel sheet?

3 A. Just this worksheet or all tabs within the
4 workbook?

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, one above the other. The lengths of the bars represent a distribution of data, with the longest bar reaching approximately 100% of the chart's width and the shortest bar reaching approximately 10%. The bars are arranged in a single column, with no labels or titles visible.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 Q. I want to talk about a couple of these
6 other columns. There's a tab labeled "SV Data."
7 What does that mean?

8 A. SV would stand for Sunnyvale. That's our
9 vernacular for the Sunnyvale facility, and this
10 is -- let me see. This is an estimate, I believe,
11 of the volumes and potential credits and costs at a
12 high level associated with a refurbishment program
13 that was performed out of the Sunnyvale facilities.

14 Q. And there's a column labeled "Instrument
15 Return Rate."

16 Do you see that?

17 A. Yes.

[REDACTED]

19 See that?

20 A. That is correct.

21 Q. What does that mean?

22 A. That was a projection of -- again, I think
23 this was likely a variable input based on an
24 expectation that, if we entered into an arrangement
25 with customers as we referred to in that business

1 pitch as instrument exchange, where, if they return
2 the instrument to us, we would engage in
3 refurbishment or remanufacturing activities and then
4 return that instrument back to them or return an
5 equivalent to new instrument back to them.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 Q. Then in return, the customer might have
12 received a refurbished instrument as well; right?

13 A. That is correct.

14 Q. I'm going to move to another tab,
15 "Instrument Volume Estimate."

16 What is this tab showing?

17 A. Would you mind, if you can zoom in. Can
18 you first zoom into the screenshots over on the
19 right and then -- those look to be SAP screenshots
20 of materials, standard costs, which -- that is
21 correct, from our ECC system. Thank you.

22 And then can you scroll to the rest of the
23 numbers over to the left?

24 Q. I want to ask you really quick, if you
25 don't mind, a couple of questions about these

1 materials.

2 What do these screenshots -- what do these
3 screenshots show?

4 A. Sure. So up close to the top, just below
5 the buttons, you can see -- let's use the top left
6 as an example. Cost components for materials
7 47006-08 -- excuse me -- 470006-08, Client 3010. So
8 that reflects one of our manufacturing plants, 3010,
9 and our business system. And that is a part number.
10 470006-08 is the eighth revision of that part number
11 within our quality system.

12 And this screenshot reflects the standard
13 costs that we update on a periodic basis, knowing
14 that PO costs can change over time and actual labor
15 costs can change over time, but standard costs are
16 what we use within the accounting world to provide a
17 standard margin for the products.

18 And so that top line, "Raw Materials," are
19 the raw components consumed, and then labor charges
20 is the cost of labor that's allocated to the
21 assembly. And I believe it includes testing,
22 initial testing of those instruments.

23 Q. When you mention the part, that would be an
24 EndoWrist; is that right?

25 A. This assessment was related to EndoWrist

1 instruments. I don't recall part numbers as it
2 relates to the names of the components. But I
3 suspect that, yes, that refers to EndoWrist. There
4 may be a translation of that part number to the
5 EndoWrist instrument name elsewhere in the document.

6 Q. And you see there's a column labeled "Part
7 Number," and the very first part number is 470006,
8 and that corresponds to a large needle drive.

9 Do you see that?

10 A. That is correct, which we would refer to as
11 an LND.

12 Q. What do these totals represent for the
13 large needle driver in the second row, Columns C, D,
14 E, F, and G?

15 A. Would you mind clicking on cell C2 so that
16 I can see where it's generated from? It doesn't
17 look to come from somewhere.

18 There's a way to audit this sheet to see
19 where this goes to. Let me see if I can ask you. I
20 want to make sure that I appropriately answer your
21 question.

22 Q. Well, I just want to get a sense of what's
23 generally being shown on this tab for "Instrument
24 Volume Est."

25 A. What I'm trying to establish for myself is

1 is this in the expected volume of instruments sent
2 or the expected volume of instruments consumed or
3 the expected volume of instruments returned?

4 I am not equipped at this point in time to
5 specifically answer that question given the age of
6 this document.

7 Q. Well, there's one figure here that says
8 "annual total procedures" in parentheses.

9 Do you see that?

10 A. That is correct.

11 Q. Then the total next to that is 210,116;
12 right?

13 A. Yes. So these would seem to indicate that
14 these are procedure counts in which those EndoWrist
15 instruments are used based on region within the
16 United States.

17 Q. You can take this exhibit down.

18 I want to ask you a couple more questions
19 about Project Dragon. Is Intuitive still
20 considering Project Dragon as of May 24th, 2021?

21 A. I don't know that that terminology
22 continues to be used, but as mentioned before, as
23 part of our product road map planning, we
24 periodically assess product development
25 opportunities. And so I would fully expect the

1 instrument refurbishment or reclamation would
2 continue to be a topic that is revisited on a
3 periodic basis.

4 (Stenographer interrupted for clarification
5 of the record.)

6 BY MR. ERWIG:

7 Q. Now, as part of your role at Intuitive, you
8 evaluated three-year, five-year, and eight-year plan
9 for the company moving forward; right?

10 A. I would rearticulate that more narrowly
11 within the scope of the business unit within which
12 my role resides, which is the global services
13 business unit, and does not include any longer
14 secondary markets as a component of that business
15 unit. So, for example, we used to manufacture the X
16 system, which was a remanufactured system. And thus
17 potential remanufacturing of instruments back in
18 that 2017 time frame, when I was in that finance
19 role, was a part of the business unit. But going
20 forward, my role is more narrowly focused on
21 services. So, for example, customer service, field
22 engineering, technical support, et cetera.

23 MR. ERWIG: I'm going to screen share our
24 next exhibit. This is I believe Plaintiff's
25 Exhibit 10.

1 THE STENOGRAPHER: I believe it's 11.

2 (Marked for identification purposes,

3 Exhibit 11.)

4 BY MR. ERWIG:

5 Q. Plaintiff's Exhibit 11 will be 4'19'18 Bair

6 to Davis and Bedore.

7 Do you see this on the screen in front of

8 you, Mr. Bair?

9 A. Yes, I do.

10 Q. Do you recognize this?

11 A. I recognize the context. It seems to match

12 the previous response I gave as it related to

13 transitioning the financial analysis, the ongoing

14 periodic financial analysis to Ben Bedore, and I

15 recall at the time that Heather Davis worked on Ben

16 Bedore's team.

17 Q. Do you recognize this as an e-mail that you

18 sent to Heather Davis and Ben Bedore on April 19th,

19 2018?

20 A. Yes, I do.

21 Q. The attachments to this e-mail --

22 withdrawn. The attachment to this e-mail is "Refurb

23 Business Model 7.24.17.xlsx." Right?

24 A. That is correct.

25 MR. ERWIG: Our next exhibit is going to be

1 Plaintiff's Exhibit 12.

2 (Marked for identification purposes,
3 Exhibit 12.)

4 MR. ERWIG: This is going to be 4'19'18
5 Attach to Bair to Davis. Screen share with you.

6 BY MR. ERWIG:

7 Q. This is another long document, and we're
8 just going to look at the PDF form of it first.

9 Do You see this on the screen in front of
10 you.

11 A. Yes.

12 Q. Does this look to be the attachment to that
13 e-mail that you sent to?

14 A. I could certainly see that, yes, it might
15 be.

16 MR. ERWIG: I'm going to stop screen
17 sharing this exhibit, and Exhibit 13 will be the
18 native Excel version of that same document. This is
19 4'19'18 EXCEL Attach to Bair to Davis.

20 (Marked for identification purposes,
21 Exhibit 13.)

22 BY MR. ERWIG:

23 Q. Do you see this in front of you, Mr. Bair?

24 A. Yes, I do.

25 Q. Do you recognize this document?

1 A. Allow me a moment to bring it up on my
2 screen.

3 Yes, I do.

4 Q. How do you recognize it?

5 A. I was engaged in crafting and updating
6 parts of the document.

7 Q. I'm going to -- withdrawn.

8 You see one of the tabs below is
9 "Consolidated Model"? Do you see that?

10 A. Yes.

11 Q. Another tab is "Cowbird Old."

12 Do you see?

13 A. Yes. And I'm chuckling to myself because
14 I'm trying to remember why we called it Cowbird.

15 Q. That was going to be my next question, is
16 what are the tabs labeled "Cowbird - Old" and
17 "Cowbird - New"?

18 A. I'm trying to think. When you let finance
19 people name things, normally it's neither funny nor
20 applicable. And that may have been -- Cowbird may
21 be a victim of that. I don't specifically recall.

22 I can say that the model -- that the old
23 and new indicators would show a potential pivot in
24 the approach for the business model as it relates to
25 refurbishment and indicating that one model is old

1 and one model is new, is the way that I would expect
2 that.

3 Q. So looking at the tab labeled "Cowbird -
4 New," what can you tell me about what appears on
5 this tab?

6 A. One moment. The objective of this tab was
7 to assess as it related to the volume constraints of
8 establishing a refurbishment instrument line and
9 what the cost curves may look like per instrument as
10 it related to getting the line startup costs secured
11 and established and ensuring that we understood the
12 volume that could be processed on one manufacturing
13 line.

14 Q. There's a graphic here. There's a graph
15 with the Y axis as fixed cost and the X axis
16 instrument quantity; right?

17 A. That is correct.

18 Q. And it seems to indicate that the costs for
19 refurbishment instruments go down the more of those
20 instruments are produced by Intuitive; right?


21 A. I'm sorry. When I hover over it, the color
22 changes. Startup costs. Startup costs.
23 Mature/ongoing fixed overhead and mature/ongoing
24 fixed overhead. So what these indicate, fixed costs
25 do not incorporate materials cost.

1 So fixed cost is one way that we look at --
2 it's an example of the overhead that I referred to
3 previously in the questioning that's not reflected
4 in the contribution margin or the product margin.
5 And so this looked more narrowly at the indirect
6 investment.

7 So we spoke about direct materials and
8 direct labor previously and what those projections
9 looked like. And so this simply articulates that,
10 as you amortize the startup costs and the fixed
11 overhead over a greater number of instruments, then
12 the cost allocated per instrument declines but only
13 for the fixed costs, not for the direct material and
14 direct labor.

15 Q. So the total cost for an EndoWrist would be
16 the fixed cost in addition to the other direct costs
17 that we discussed earlier; is that right?

18 A. That would not be the total cost because
19 there would still be elements that aren't captured
20 as it relates to selling general administrative.
21 For example, commissions, the actual research and
22 development, the verification and validation,
23 et cetera, that I would pull into the total cost of
24 an instrument.



[REDACTED]

11 Q. I'm going to stop screen sharing this
12 exhibit.

13 Mr. Bair, are you aware that Intuitive has
14 contracts with hospitals that are its customers?

15 A. Yes, I am.

16 Q. Can you describe to me how you're aware of
17 that?

18 A. I am -- during two functions ago, when I
19 was the director of field service engineering for
20 the western United States, I was charged with
21 ensuring that my team met the service level
22 agreements associated with our obligations under
23 those contracts.

24 Q. And how did you personally -- withdrawn.

25 Did you ever personally become involved in

1 a -- withdrawn.

2 In your role -- you described a role two
3 functions ago. What was the exact title of that
4 role?

5 A. Director US field service west.

6 Q. Is it your understanding that the contracts
7 that Intuitive has with its hospital customers
8 prohibits those customers from modifying or altering
9 EndoWrists in any way?

10 A. It is my understanding that the licensing
11 agreement does not allow for alteration of the
12 equipment, that is correct.

13 Q. The sales contract that Intuitive signs
14 with the hospitals, it prohibits those hospitals
15 from repairing or servicing their EndoWrists as
16 well; right?

17 A. I could speak to the exact language. I
18 don't recall the precise words that are used within
19 the standard licensing agreement, but there are some
20 repairs, basic repairs, or trouble shooting as
21 explored in the instructions for use, or the IFU,
22 sold with the robot that -- or with the product that
23 customers can engage in as it relates to
24 lubrication, sterilization, replacing components,
25 for example, stapler inserts or clips, et cetera.

1 Q. It's your understanding that the sales
2 contract prohibits hospital customers from using a
3 third party to repair or service their EndoWrists;
4 true?

5 A. I am not certain that I recall the
6 limitations associated with what a hospital may do
7 or what a hospital may permit a third party to do,
8 but I do recall that generally manipulation,
9 adulteration, et cetera, of the equipment is not
10 allowed under the licensing agreement.

11 Q. And at a high level you certainly
12 understood that Intuitive would react to hospitals
13 that were using third parties to repair their
14 EndoWrists; right?

15 A. That is correct.

16 Q. And you knew that Intuitive would
17 ultimately stop serving the da Vinci surgical robots
18 of those customers?

19 A. If according to our practice as it related
20 to engaging customers that were engaging in
21 activities prohibited by the limited license
22 agreement, yes, I was aware that one implication may
23 be that we do not continue to service their
24 equipment.

25 MR. ERWIG: I'm going to screen share our

1 next exhibit. This will be from Folder 3. I

2 believe this will be Exhibit 14.

3 THE STENOGRAPHER: I believe so.

4 (Marked for identification purposes,

5 Exhibit 14.)

6 MR. ERWIG: This will be 6'20'19 Bair to

7 Cooley.

8 BY MR. ERWIG:

9 Q. Screen share this with you, Mr. Bair. Do
10 you see this on the screen in front of you?

11 A. Yes, I do.

12 Q. I'll draw your attention to an e-mail a
13 little bit lower on this thread.

14 Do you recognize this e-mail from
15 June 20th, 2019?

16 A. Yes, it does ring a bell.

17 Q. How do you recognize it?

18 A. I authored it.

19 Q. What do you mean by that?

20 A. I wrote the e-mail from my e-mail address

21 and sent it to a sales representative -- I believe

22 Jack Groner is one of our key accounts directors --

23 and Matt Pate with whom we were working with at

24 USPI, or United Surgical Partners, I believe.

25 Q. And down below there's an e-mail from Jack

1 Groner to Matt Pate, yourself, and AJ Inacay.

2 Do you see that?

3 A. Yes.

4 Q. It mentions a third-party company that's
5 placing nonapproved computer chips back into an
6 instrument; is that right?

7 A. That is correct.

8 Q. Your response later up the thread is --
9 well, withdrawn.

10 Matt then sends a question to Jack Groner
11 that asks "What section of the contract prohibits
12 reprocessing?"

13 Do you see that?

14 A. Yes.

15 Q. Then you reply, "Hi, Jack/Matt. It's
16 traditionally in the second sentence of Section 3.4
17 of the sales license and service agreement."

18 Do you see that?

19 A. Yes.

20 Q. And you specifically cite something that
21 you refer to as standard language in a section in
22 its entirety. Do you see that?

23 A. Yes.

24 Q. That cited language is "Customer will not
25 nor will customer permit any third party to modify,

1 disassemble, reverse-engineer, alter, or misuse the
2 system or instruments and accessories."

3 Do you see that?

4 A. That is correct.

5 Q. Is it your understanding that that's
6 standard language in each sales contract that
7 Intuitive has with its hospital customers?

8 A. That is my understanding.

9 Q. And it's your understanding that the
10 standard -- withdrawn.

11 It's your understanding that the sales
12 license and service agreement is meant to stop the
13 hospitals from engaging third parties to repair
14 EndoWrists; right?

15 MS. LENT: Object to the form.

16 THE WITNESS: One implication of the
17 limited license would include, as stated here, third
18 parties engaging in activities that would modify,
19 disassemble, reverse-engineer, alter, or misuse the
20 system or instruments and accessories.

21 BY MR. ERWIG:

22 Q. And it's your understanding that, in the
23 manner in which those terms are written into the
24 contract, that hospitals are not permitted to
25 utilize third parties to perform repairs or services

1 on their EndoWrists; right?

2 A. Could you clarify what you mean, "service"?

3 As I mentioned, there are user serviceable

4 components, and reprocessing and sterilization --

5 disinfection, cleaning, reprocessing, sterilization,

6 et cetera, could all be considered permissible

7 services under the licensing as long as they do not

8 modify, disassemble, reverse-engineer, alter, or

9 misuse.

10 Q. Well, let's talk about disassemble. If a

11 third party inserts a chip into the EndoWrist to

12 reset the use counter, that would constitute a

13 violation of Section 3.4; is that right?

14 A. That is correct.

15 Q. And the purpose of the sales license and

16 service agreement is to stop hospitals from using

17 third parties to performance those types of

18 services; right?

19 MS. LENT: Object to the form.

20 THE WITNESS: We do not deem what you

21 stated to be a service, as I stipulated in my

22 previous response.

23 BY MR. ERWIG:

24 Q. Well, it's your understanding that the

25 sales license and service agreement is designed to

1 prevent that activity; right?

2 MS. LENT: Object to the form.

3 THE WITNESS: Among other things, it is
4 intended to prohibit modifying an FDA-cleared device
5 in a form or fashion that would impact its safety
6 and impact its form and function.

7 BY MR. ERWIG:

8 Q. Well, sir, those words about safety and
9 form and function, I understand that you're
10 inserting those there, but if we just look at the
11 language of the Section 3.4, it says, "Customer will
12 not, nor will customer permit any third party to
13 modify, disassemble, reverse-engineer, alter, or
14 misuse the system or instruments and accessories."

15 That's what the language says; right?

16 A. That is correct.

17 Q. So any sort of alteration would be
18 prohibited under Section 3.4; right?

19 MS. LENT: Objection. Asking for a legal
20 conclusion.

21 THE WITNESS: Physical alteration, I think,
22 against the initial or the design of the medical
23 device, yes, I agree with that. If one deems to be
24 serving -- so, for example, lubrication as
25 alteration -- then that certainly is not part of the

1 scope.

2 BY MR. ERWIG:

3 Q. I'm going to stop screen sharing this
4 exhibit.

5 Now, sir, it's your understanding that,
6 when hospitals have utilized third parties, that
7 Intuitive in many instances has terminated the sales
8 license and service agreement; right?

9 MS. LENT: Object to the form.

10 THE WITNESS: My understanding is, when
11 customers have used non-FDA approved devices on or
12 in conjunction with the da Vinci system that we are
13 aware of, that we have often detected that and have
14 alerted customers and educated them as it relates to
15 the safety of -- associated with such actions.

16 BY MR. ERWIG:

17 Q. We'll get to the safety, sir, but right now
18 I just wanted to get a sense of the response that
19 Intuitive has to those situations. And one of the
20 responses that Intuitive has when hospitals utilize
21 EndoWrists that have been altered, modified, or
22 repaired by a third party is Intuitive will
23 terminate the sales license and service agreement.

24 A. In some cases that may be the ultimate
25 outcome, but in other cases that is not accurate.

1 MR. ERWIG: I'm going to screen share our
2 next exhibit. This will be Plaintiff's Exhibit 15.

3 (Marked for identification purposes,
4 Exhibit 15.)

5 MR. ERWIG: This will be 7'19'19 Bair to
6 others.

7 BY MR. ERWIG:

8 Q. Do you see this on the screen in front of
9 you?

10 A. Yes, I do.

11 Q. I'm going to scroll down to the first
12 e-mail. Do you see this first e-mail?

13 A. One moment, please.

14 Yes, I do recall.

15 Q. How do you recognize this?

16 A. I authored it.

17 Q. Now, in the section you write -- withdrawn.

18 In this e-mail -- withdrawn.

19 Is this an e-mail you sent to Albert Vidal
20 and others at Intuitive Surgical on July 19th, 2019?

21 A. Yes.

22 Q. In this e-mail you write, "Gents, we just
23 terminated our first SSA today (Conway Regional) for
24 material breach of the limited use licensing
25 provisions."

1 Do you see that?

2 A. Yes.

3 Q. Your next sentence says, "After attempting
4 to get them to stop reprogramming instruments over
5 the course of about nine months, we canceled their
6 service contract, and all I&A orders from them are
7 blocked going forward."

8 Do you see that?

9 A. That is correct.

10 Q. What are I&A orders?

11 A. Instrument and accessory orders from
12 Intuitive.

13 Q. So that would include da Vinci surgical
14 robots; is that right?

15 A. It would not include new robots.

16 Q. What does I&A orders include?

17 A. EndoWrist instruments and accessories sold
18 with the system. For example, that would include
19 cannula seals, drapes, vision or endoscopic-type
20 equipment, cables. A whole litany of accessories
21 that are part of our product catalog.

22 Q. Your next sentence says, "We will decline
23 T&M POs as well." What does T&M mean?

24 A. Time and material POs which indicated, if a
25 customer is not covered under a service and support

1 contract, then they engage with us on a time and
2 materials basis, which means they request a repair,
3 we quote the repair, and then they provide a P&O --
4 a PO -- excuse me -- to authorize us to conduct the
5 repair.

6 Q. So the result of terminating the SSA with
7 Conway Regional was that Conway Regional can no
8 longer purchase instruments or accessories from
9 Intuitive; right?

10 A. That is correct.

11 Q. And Conway Regional could no longer obtain
12 any service from Intuitive for its da Vinci robots;
13 is that right?

14 A. That is correct.

15 Q. I'm going to stop screen sharing -- well,
16 withdrawn.

17 And the reason that you terminated the
18 agreement with Conway Regional was because Conway
19 Regional was using a third party to reprogram
20 instruments over the course of about nine months;
21 right?

22 A. Yes. Conway Regional was using
23 non-FDA-approved devices on the da Vinci system and,
24 following our engagement with them over a period of
25 time, ultimately, terminated the licensing

1 agreement.

2 Q. Well, sir, the -- Conway Regional was using
3 EndoWrists that had been repaired by a third party;
4 right?

5 MS. LENT: Object to the form.

6 THE WITNESS: We do not consider the
7 activities that were undertaken to be repair
8 activities.

9 BY MR. ERWIG:

10 Q. Well, sir, have you personally done any
11 sort of studies on the efficacy of reprogrammed
12 instruments?

13 A. No, I have not.

14 Q. Have you instructed any members of your
15 team to do any studies on the efficacy of
16 reprogrammed instruments?

17 A. Not that I recall.

18 Q. Before terminating the sales contract with
19 Conway Regional, did you instruct anyone at
20 Intuitive to investigate whether the instruments
21 being used by Conway were safe and reliable?

22 A. We had explored whether appropriate
23 regulatory clearance had been obtained. For
24 example, I do believe that we requested evidence of
25 a 510(k) approval from the FDA in advance of this,

1 or the customer had from whomever they were engaging
2 with, and in turn received the regulatory clearance
3 to sell and market Intuitive's EndoWrist devices,
4 which were validated and approved with a life limit
5 of ten.

6 Q. Well, sir, my question is a little bit more
7 specific, which is did anyone from Intuitive ever
8 take a reprogrammed instrument and do some testing
9 to see how it compared to a new EndoWrist from
10 Intuitive?

11 A. We, in fact, had a complaint associated
12 with a reprogrammed instrument and would have
13 conducted failure analysis on such an instrument.

14 Is that within the scope of your question?

15 Q. Well, my question is the instruments
16 specifically used by Conway Regional. Did anyone
17 from Intuitive look at the reprogrammed instruments
18 and compare them to brand-new EndoWrists sold by
19 Intuitive?

20 A. I believe that, yes, we had done comparison
21 of example instruments that we had received through
22 the return material authorization program, as
23 previously discussed.

24 Q. Describe to me that comparison.

25 A. It was an analysis of the physical

1 characteristics of the instrument. And I don't have
2 a deep understanding of that other than modification
3 or adulteration had been detected and -- which
4 rendered the instrument different than the
5 instrument that had been cleared by the FDA.

6 Q. You mentioned that modification and
7 adulteration had been detected. Was there --
8 withdrawn.

9 You mentioned modification and
10 adulteration. Was there a safety comparison between
11 a brand-new instrument and an instrument that had a
12 modification or adulteration?

13 MS. LENT: Object to the form.

14 THE WITNESS: I recall that, as part of our
15 validation and life limit, we extended the use of
16 instruments to determine at which point they failed.
17 I don't recall those instruments being -- that were
18 tested specifically being instruments that were
19 modified by an unauthorized third party.

20 BY MR. ERWIG:

21 Q. Well, did you, for example -- well,
22 withdrawn.

23 Are you aware of anyone from Intuitive
24 taking a reprogrammed instrument and testing that
25 instrument to failure?

1 A. I do not recall an instance.

2 Q. Are you aware of any instances where
3 Intuitive took -- withdrawn.

4 Are you aware of any instances where
5 someone at Intuitive took a reprogrammed instrument
6 and tested how it performed during a simulated
7 surgery, for example?

8 A. I'm aware of, if I recall correctly, some
9 testing by customers that we were aware of for
10 reprogrammed or modified instruments. I'm not aware
11 of internal testing that we'd done with instruments
12 other than our own that had been run past the ten
13 life limit count, at which they failed.

14 Q. So in terms of the relative performance of
15 reprogrammed instruments and EndoWrists, you're not
16 aware of any studies that have been done by
17 Intuitive on the efficacy of reprogrammed
18 instruments relative to new instruments sold by
19 Intuitive; is that right?

20 A. I am aware in a limited fashion of the
21 results of our own internal testing as it relates to
22 using instruments beyond their validated lives,
23 which served as a relative proxy for us as it
24 related to modification and extension of the life
25 limits of third-party reprogrammed instruments.

1 Q. Well, let's talk about the using
2 instruments beyond their validated lives. There's
3 certain things that can happen to instruments over
4 time; right?

5 A. Yes.

6 Q. One of the things that could happen is
7 scissors, they can become dull and not able to cut
8 very well anymore; right?

9 A. That is accurate.

10 Q. And if that happened at 11 uses, Intuitive
11 would consider that a failure of that instrument;
12 right?

13 MS. LENT: Object to the form.

14 THE WITNESS: I am not personally familiar
15 with all of the various failure modes and measures.
16 For example, there are grades of scissor blade
17 sharpness and dullness, and I am unfamiliar with
18 what constitutes the gradient between a sharp blade
19 and a dull blade as such, what we would deem that
20 instrument to be failed.

21 BY MR. ERWIG:

22 Q. Well, you understand that in some --
23 withdrawn.

24 You understand that at any point, when an
25 instrument is considered not suitable for a given

1 surgery, Intuitive considers that a failure; right?

2 A. If the instrument is not performing as
3 designed in an intuitive and clinically safe
4 fashion, then yes, we would deem that to be a
5 failure.

6 Q. Once an instrument is deemed to have
7 failed, then there's no effort made to repair that
8 instrument so it can continue operating by
9 Intuitive; right?

10 MS. LENT: Object to the form.

11 THE WITNESS: I am not aware of efforts by
12 Intuitive to repair failed instruments.

13 BY MR. ERWIG:

14 Q. So when an instrument fails, Intuitive
15 knows that at that point there's some sort of repair
16 that's needed for the instrument; right?

17 MS. LENT: Object to the form.

18 THE WITNESS: Could you specify your
19 definition of "repair"?

20 BY MR. ERWIG:

21 Q. Well, sir, what I'm getting at is when
22 Intuitive -- withdrawn.

23 You mentioned extended-life testing earlier
24 and that in extended-life testing Intuitive tested
25 some instruments beyond their original use limit;

1 right?

2 A. That is correct.

3 Q. Now, when an instrument fails in that
4 process, Intuitive records that failure and then
5 disposes of the instrument; right?

6 A. I'm not certain of the final disposition of
7 the instrument as to whether we retain and store or
8 dispose of instruments that are used in simulated
9 use and validation testing. I don't know that I can
10 answer that.

11 Q. When Intuitive tests an instrument and that
12 instrument fails, Intuitive does not make any
13 efforts to repair or refurbish that instrument to
14 continue its testing; right?

15 A. That is correct.

16 Q. And so Intuitive does not have any sort of
17 testing or data about whether instruments can last
18 even beyond failure with the appropriate repairs or
19 refurbishment; right?

20 MS. LENT: Object to the form.

21 THE WITNESS: What data we may have as it
22 relates to validation and verification for extended
23 lives is outside of the scope of my expertise.

24 MR. ERWIG: I'm going to stop screen
25 sharing this exhibit. Let's go off the record, and

1 we'll take a break.

2 THE VIDEOGRAPHER: The time is 3:18 p.m.,
3 and we are now off the record.

4 (Recess taken from 3:18 until 3:34.)

5 THE VIDEOGRAPHER: The time is 3:34 p.m.,
6 and we are back on the record.

7 MR. ERWIG: Our next exhibit is going to be
8 Plaintiff's Exhibit 16. This will be 10'11'19
9 Carlson to Bair.

10 (Marked for identification purposes,
11 Exhibit 16.)

12 BY MR. ERWIG:

13 Q. Screen share.

14 Mr. Bair, do you see this on the screen in
15 front of you?

16 A. Yes, I do.

17 Q. I want to start on this e-mail from Eric
18 Lashinsky to Grant Peterson, Andrew Coster, copying
19 yourself and others from Intuitive.

20 Do you see that?

21 A. Yes, I do.

22 Q. And Mr. Lashinsky writes, "Grant and
23 Andrew, this has occurred at other facilities and it
24 is not advised. I'm copying my director, Ron Bair,
25 for his input and any documentation that may be

1 available for us to present to the customer."

2 Do you see that?

3 A. Yes.

4 Q. And earlier down in this e-mail chain Grant

5 Peterson --

6 THE STENOGRAPHER: Hold on. It looks like

7 Karen was trying to say something and it wasn't

8 coming through. Do you want to go off the record?

9 MR. ERWIG: Let's go off the record.

10 THE VIDEOGRAPHER: The time is 3:36 p.m.,

11 and we are off the record.

12 (Recess taken from 3:36 to 3:40.)

13 THE VIDEOGRAPHER: The time is 3:40 p.m.,

14 and we are back on the record.

15 BY MR. ERWIG:

16 Q. Mr. Bair, I'll resume screen sharing.

17 There's an e-mail from Grant Peterson to Andrew

18 Coster down later in the e-mail thread.

19 Do you see that?

20 A. Yes.

21 Q. In that e-mail thread, Mr. Peterson writes,

22 "Apparently, the account is looking to use a third

23 party to repair their system."

24 Do you see that?

25 A. Yes.

1 Q. What do you understand is meant by that?

2 A. I understand that to mean a -- an entity
3 that is not authorized to modify or repair the
4 system and that the customer is looking to
5 potentially engage that party.

6 Q. Higher up you then write on October 11th,
7 2019, "Eric, thanks for looping me in. Assuming
8 this site is in Mesa."

9 Do you see that?

10 A. Yes.

11 Q. And I want to talk with you about the
12 paragraph that starts with "high level." Do you see
13 that?

14 A. Yes.

15 Q. And you write, "High level - if they" --
16 hospital -- "permits a third party to alter/tamper
17 with the system, that's in violation of the limited
18 license and we will decline to service it. Systems
19 cannot be properly serviced without a proprietary
20 software. So, ultimately, they will encounter an
21 issue where they will need our assistance."

22 Do you see that?

23 A. Yes.

24 Q. Is that generally consistent with the
25 reaction that Intuitive would have to hospitals that

1 used third parties to repair or service their
2 instruments?

3 A. That is consistent to our response as it
4 relates to violations of the limited licensing
5 agreement.

6 Q. When you say limited licensing agreement,
7 that's the contract that Intuitive and the hospitals
8 sign when the hospital purchases a da Vinci robotic
9 surgery system; is that right?

10 A. That is correct.

11 Q. Now, lower you write, "If they also begin
12 using reprogrammed instrumentation (we often see
13 those go hand in hand), then we will ultimately
14 terminate the license and no longer sell them and
15 I&A or service their system."

16 Do you see that?

17 A. I do.

18 Q. Is it your understanding in your role at
19 Intuitive that, if a hospital used reprogrammed
20 instrumentation, that Intuitive would terminate that
21 hospital's sales contract and no longer sell them
22 materials or service their system?

23 A. That is not fully accurate.

24 Q. What is inaccurate about that statement?

25 A. That not each of those or every one of

1 those engagements does not result in termination of
2 the limited licensing agreement.

3 Q. Well, I understand there's some actions
4 that Intuitive takes first, like sending a letter
5 for example; right?

6 A. That is correct. And engaging in
7 conversation.

8 Q. We'll talk about that later on. But the
9 thing that you write here is that "we will
10 ultimately terminate the license and no longer sell
11 them or service their system." Right?

12 A. It would have been more accurate for me to
13 say then we may ultimately terminate the license. I
14 think for the sake of brevity or another reason, I
15 said we will ultimately. And some of these
16 engagements do, ultimately, result in license
17 termination but not all of them do.

18 Q. Well, when you were writing this e-mail,
19 you had the choice of writing "we will ultimately
20 terminate" or "we may ultimately terminate"; right?

21 A. That is correct.

22 Q. The word that you chose here was "we will
23 ultimately terminate the license and no longer sell
24 them an I&A." Right?

25 A. That is correct.

1 Q. In fact, the e-mail that we looked at
2 earlier with Conway, you did, in fact, terminate the
3 contract with Conway and no longer sold Conway
4 instruments and accessories; right?

5 A. Following a nine-month period of
6 engagement, that is correct.

7 Q. And you also no longer serviced Conway's
8 da Vinci robot systems; right?

9 A. That is correct.

10 Q. And as per this e-mail, if a system isn't
11 serviced by Intuitive without Intuitive's
12 proprietary software, customer ultimately encounters
13 an issue that renders that robot unusable; right?

14 A. They certainly may.

15 Q. Without Intuitive there to provide service,
16 then the customer would no longer be able to use
17 that robot for surgeries; right?

18 A. It depends on the failure mode that's
19 experienced by the customer, if the customer does
20 experience a failure mode.

21 Q. I'm going to stop screen sharing this
22 exhibit.

23 Are you aware, Mr. Bair, that there were
24 letters sent to hospitals to enforce the contractual
25 terms of the SLSA, the sales license and service

1 agreement?

2 A. Yes, I am aware.

3 MR. ERWIG: I'm going to screen share our

4 next exhibit. This will be Plaintiff's Exhibit 17.

5 (Marked for identification purposes,

6 Exhibit 17.)

7 MR. ERWIG: This will be 1'30'20 Bair to

8 Lowe. Do you see this on the screen in front of

9 you?

10 THE WITNESS: Yes, I do.

11 BY MR. ERWIG:

12 Q. Do you recognize this?

13 A. Yes, I do.

14 Q. On the first bullet point -- withdrawn.

15 How is it that you recognize it?

16 A. I authored and sent the e-mail.

17 Q. This is an e-mail that you sent on

18 January 30th, 2020, to Josh Lowe, Lucas Docter, and

19 Matt Davis at Intuitive Surgical?

20 A. That is correct.

21 Q. In bullet point 1 you write, "Are they

22 considering" -- "they" mean Cairo -- "third-party

23 service or third-party instruments or both?"

24 Do you see that?

25 A. I believe "they" referred to the customer

1 as an entity versus an individual. But, yes, I do
2 see that.

3 Q. Near the end of that paragraph you write,
4 "There's a letter each for I&A and service, and I
5 think they explain our position fairly well."

6 Do you see that?

7 A. Yes.

8 Q. Then there's a couple of attachments to
9 this, the Ardent Health Patient Health Implications
10 Letter and the -- Part 2, and the Ardent Health
11 Patient Safety Implications Letter Part 1.

12 Do you see that?

13 A. I do.

14 MR. ERWIG: I'm going to stop screen
15 sharing this exhibit.

16 We'll screen share our next exhibit, which
17 is one of the letters that's attached to this
18 document. This will be 1'30'20 Attach to Bair to
19 Lowe. This will be Plaintiff's Exhibit 18.

20 (Marked for identification purposes,
21 Exhibit 18.)

22 BY MR. ERWIG:

23 Q. Do you see this on the screen in front of
24 you, Mr. Bair?

25 A. Yes, I do.

1 Q. Do you recognize this document?

2 A. Yes, I do.

3 Q. How do you recognize it?

4 A. I believe it was prepared in advance of a
5 meeting with -- I believe Cairo and potentially one
6 or two other representatives within Ardent.

7 Q. You see that the letter starts with "We
8 understand that Ardent Health Services is using or
9 considering using refurbished EndoWrist instruments
10 obtained from and/or modified by a third party for
11 use beyond the programmed number of uses."

12 Do you see that?

13 A. Yes.

14 Q. What is the purpose of sending these
15 letters to hospitals?

16 A. The primary purpose is to educate on the
17 potential safety implications of using nonapproved
18 devices in conjunction with their da Vinci products,
19 and secondarily to inform or remind them of their
20 obligations under the sales licensing and service
21 agreement as established with the customer when they
22 purchased the da Vinci system.

23 Q. Now, Mr. Bair, it's your understanding that
24 the letters sent to hospitals are designed to have
25 the hospital stop engaging with third-party -- well,

1 withdrawn.

2 Mr. Bair, it's your understanding that the
3 letters sent to hospitals are designed to stop the
4 hospitals from engaging with third parties for
5 repairs of their EndoWrists; right?

6 MS. LENT: Object to the form.

7 THE WITNESS: That may be one of the
8 reasons that the letter is crafted, but I believe I
9 stated previously the intention of the letter to
10 convey the potential patient safety implications of
11 engaging in such activities and reminding them of
12 their agreement with Intuitive on the sale of that
13 robot.

14 BY MR. ERWIG:

15 Q. I want to talk a little bit about the
16 section of this letter labeled "Your contract with
17 Intuitive."

18 Do you see that?

19 A. Yes.

20 Q. Now, one of these sentences reads, "Using
21 instruments beyond the programmed number of uses is
22 a material breach of the agreement."

23 Do you see that?

24 A. Yes, I do.

25 Q. Is it your understanding that any customer

1 who used an EndoWrist beyond the programmed number
2 of uses would be in breach of the contract that it
3 signed with Intuitive?

4 MS. LENT: Objection. Calls for a legal
5 conclusion.

6 THE WITNESS: My understanding is, if use
7 beyond the programmed number of uses is the result
8 of modification or another violation of the limited
9 licensing agreement, then yes.

10 BY MR. ERWIG:

11 Q. Well, it's certainly not possible to use
12 instruments beyond the programmed number of uses
13 without some sort of modification or alteration;
14 right?

15 A. I am not aware of -- of how that may be
16 performed.

17 Q. Now, is it your understanding that a
18 hospital that utilizes a third-party repair service
19 for an EndoWrist that breaks before its prescribed
20 number of uses is up is also in violation of the
21 contract with Intuitive?

22 A. I believe --

23 MS. LENT: Objection. Calls for a legal
24 conclusion.

25 THE WITNESS: My layman's understanding is

1 that depends on if the activities engaged in are in
2 violation of the language within the limited
3 licensing agreement. So, for example, we previously
4 discussed servicing that can be performed by
5 customers that is permissible and allowable, and
6 then there are certain elements of what some would
7 deem to be repair or refurbishment that appear to be
8 in violation of the agreement.

9 BY MR. ERWIG:

10 Q. The exact way the text is written, it says
11 that "any other use is prohibited, whether before or
12 after the instrument or accessory's license
13 expiration, including repair, refurbishment, or
14 reconditioning not approved by Intuitive."

15 Do you see that?

16 A. I do.

17 Q. Now, this doesn't say after the
18 instrument's -- withdrawn.

19 This doesn't say "only after the instrument
20 or accessory's license expiration"; right?

21 A. That is correct.

22 Q. It mentions that any repair, refurbishment,
23 or reconditioning not approved by Intuitive before
24 or after the instrument or accessory's use counter
25 expires is prohibited by the sales agreement; right?

1 MS. LENT: Object to the form.

2 THE WITNESS: Allow me to read the
3 preceding sentence again. I am familiar with use
4 that is out of compliance with the limited license
5 agreement -- for example, as we discussed,
6 modification -- which -- whether the modification
7 occurred before or after the instrument reached its
8 number of useful lives, I think is inconsequential.

9 BY MR. ERWIG:

10 Q. Are you aware of an entity named Rebotix
11 Repair?

12 A. I am modestly aware of them, yes.

13 Q. How are you modestly aware of them?

14 A. I had heard several years ago that they
15 were an entity potentially engaging in
16 modification -- unauthorized modification of our
17 products. And then, more recently, I became aware
18 that I would be deposed as part of the legal
19 proceedings that Rebotix has engaged in against
20 Intuitive.

21 Q. Is it your understanding that Intuitive
22 approves Rebotix's services to hospitals?

23 MS. LENT: Object to the form.

24 THE WITNESS: Sorry. Can you rephrase
25 that?

1 BY MR. ERWIG:

2 Q. Well, sure. This section reads, "Any other
3 use is prohibited, whether before or after the
4 instrument or accessory's license expiration,
5 including repair, refurbishment, or reconditioning
6 not approved by Intuitive."

7 My question is, is it your understanding
8 that the activities that Rebotix engages in are not
9 approved by Intuitive?

10 A. It is my understanding that Rebotix has not
11 engaged Intuitive to seek approval and validation in
12 alignment with our third-party product policy and
13 practices.

14 Q. And Intuitive hasn't separately approved
15 Rebotix's actions; right?

16 A. Not that I am aware of.

17 Q. So any sort of repair, refurbishment, or
18 reconditioning performed by Rebotix, that would be a
19 prohibited use as you read this sentence; right?

20 A. As it relates to my understanding, any
21 repair, refurbishment, et cetera that is in
22 violation of the terminology of the agreement is
23 what is prohibited. So, by extension, if Rebotix
24 was engaging in those activities as it related to
25 modifying the approved devices, then yes, I agree.

1 Q. Now, sir, you understand that -- withdrawn.

2 When a customer has an EndoWrist whose uses
3 have expired, you understand that Intuitive wants
4 that customer to then purchase a new instrument from
5 Intuitive; is that right?

6 A. If the customer is, in fact, in need of
7 instruments, then yes, the expectation would be that
8 they would procure FDA-approved instrumentation or
9 devices for use in conjunction with the da Vinci or
10 on or through the da Vinci.

11 Q. And let's just be very clear. The only
12 place where you can buy -- where a customer can buy
13 EndoWrist, that's from Intuitive Surgical or an
14 Intuitive Surgical directly approved distributor;
15 right?

16 A. I do not believe that to be the case.

17 Q. Where else can a customer obtain an
18 EndoWrist?

19 A. I have seen, for example, EndoWrist
20 instruments for sale on eBay, as an example, or
21 potentially other medical supply trade forums.

22 Q. You understand that it's Intuitive's wish
23 that a customer purchase a new EndoWrist instead of
24 attempting to repair existing EndoWrists that have
25 expired beyond their use counter limit; right?

1 A. We -- that would be correct.

2 Q. Now I want to direct your attention to the
3 last paragraph here, which -- and one of the
4 sentences in this last paragraph starts with "Should
5 Intuitive or its personnel determine, after having
6 accepted a service call or a purchase order for a
7 service call, such as after an Intuitive field
8 service engineer arrives at your site for a service
9 call, that the system has been used with instruments
10 refurbished or modified by an unauthorized third
11 party, Intuitive may not provide service for such a
12 system."

13 Do you see that?

14 A. Yes, I do.

15 Q. Is it your understanding that, ultimately,
16 if customers continued using third-party repair
17 services, that Intuitive will not provide service
18 for a da Vinci system?

19 A. In most cases, that is accurate. But it
20 depends on exactly what activities have been engaged
21 in by the third party as to whether it constitutes a
22 violation of the licensing agreement or not. For
23 example, we mentioned and discussed repairs -- basic
24 repair, maintenance, troubleshooting, et cetera,
25 that people can engage in through -- or in alignment

1 with the IFU, or instructions for use, for the
2 equipment.

3 Q. Well, certainly, if a third party adds uses
4 to an EndoWrist, that would not be an approved use;
5 right?

6 A. Correct. We would deem that to be
7 modifying the medical device beyond the scope of
8 what was approved by the FDA and -- so that would
9 not be authorized.

10 Q. Is it your understanding that the FDA
11 requires a certain number of uses for EndoWrist
12 instruments?

13 A. It is not my understanding --

14 MS. LENT: Object to the form.

15 BY MR. ERWIG:

16 Q. I'm sorry. I didn't get your answer.

17 A. I said that is not my understanding.

18 Q. I'm going to take down this exhibit.

19 Now, ultimately, when hospitals utilize
20 third parties to reset the use counter on EndoWrist
21 instruments, Intuitive will take a series of actions
22 against that hospital; right?

23 A. We would engage in activities with that
24 hospital. That is correct.

25 Q. Well, the first thing you'd do is you'd

1 have a conversation with the hospital; right?

2 A. Generally that has historically been the
3 approach. That is correct.

4 Q. You might send the hospital a letter;
5 right?

6 A. That is correct.

7 Q. But then, ultimately, if the hospital
8 continues using a third party to add lives to the
9 use counter, then you would terminate that
10 hospital's sales agreement; right?

11 A. If -- that is correct. If we engage in the
12 prior activities as you mentioned which ultimately
13 don't yield an alignment with the hospital, then we
14 may ultimately terminate the licensing agreement.

15 Q. When you say "yield an alignment with the
16 hospital," you mean that the hospital stops using
17 the third party and returns to purchasing EndoWrists
18 from Intuitive; right?

19 A. I mean that the hospital stops using
20 equipment in conjunction with the da Vinci or on the
21 da Vinci that is not authorized for use on the
22 da Vinci.

23 Q. And that the hospital stops engaging with a
24 third party that repairs those EndoWrists; right?

25 MS. LENT: Object to the form.

1 THE WITNESS: Could you rephrase that?

2 Because we don't prohibit our hospitals from having
3 certain relationships or engaging in certain
4 economic or commercial activity unless it's in
5 violation of the licensing agreement.

6 BY MR. ERWIG:

7 Q. Well, sir, the sales agreement --
8 withdrawn.

9 Sir, the manner in which Intuitive enforces
10 its sales agreements certainly does restrict its
11 customers' abilities to utilize third parties to
12 repair its EndoWrists; right?

13 MS. LENT: Object to the form.

14 THE WITNESS: The licensing agreement
15 prohibits the modification of devices -- of
16 Intuitive's devices that are under a limited
17 license.

18 BY MR. ERWIG:

19 Q. Well, sir, that's not all it does; right?
20 It prohibits any repair that's not authorized by
21 Intuitive. True?

22 A. Could we go back to the language?

23 Q. We certainly can.

24 A. I think it speaks to specifically what is
25 allowed and what is not.

1 Q. I'll highlight this language for you again.

2 And it reads, "Any other use is prohibited,
3 whether before or after the instrument or
4 accessory's license expiration, including repair,
5 refurbishment, or reconditioning not approved by
6 Intuitive."

7 Do you see that?

8 A. I do. The request was to go back to the
9 licensing agreement that was signed with the
10 hospital.

11 Q. I don't believe we've pulled that up.

12 A. There was an excerpt in the previous
13 that -- it was in the Lashinsky exhibit. This is
14 not the exact language from the sales, licensing,
15 and service agreement. So I would have those that
16 authored this letter probably speak more
17 specifically to the language in that letter.

18 Q. Well, sir, is it your understanding that
19 Intuitive freely permits hospitals to use third
20 parties to reset the use counters on EndoWrists with
21 no consequence?

22 A. Do I agree that we freely allow them to do
23 that with no consequence?

24 Q. Well, that you freely allow the hospitals
25 to take that action.

1 MS. LENT: Object to the form.

2 THE WITNESS: Yeah, could we frame the
3 question differently?

4 Do we discourage them engaging in that
5 activity? How would you reframe it?

6 BY MR. ERWIG:

7 Q. Well, sir, we talked about earlier that
8 there's a series of steps that Intuitive takes when
9 it finds out that a hospital is using reprogrammed
10 EndoWrists; right?

11 A. That is correct.

12 Q. One of the things that Intuitive does is it
13 might have a conversation with the hospital; right?

14 A. That is correct.

15 Q. The next thing it might do is send a
16 letter; right?

17 A. That is correct.

18 Q. And then, ultimately, Intuitive will stop
19 servicing the da Vinci robot for the hospital;
20 right?

21 A. If they do not stop using those devices on
22 the da Vinci, that is correct.

23 I do not know that we are aware of when
24 they may, for example, provide instruments to a
25 third party for repair. So if that repair isn't

1 something that we become aware of or that registers
2 on a system, that's the limitation to which I think
3 we have visibility to. And that, I don't know that
4 we could practically control.

5 Q. As soon as an EndoWrist is used on a
6 robot -- well, withdrawn.

7 The purpose of da Vinci robots is to
8 perform surgeries; right?

9 A. That is correct.

10 Q. Hospitals buy those robots in order to
11 perform surgeries; right?

12 A. That is correct.

13 Q. And they're a substantial investment in
14 terms of money and training time and things like
15 that as well; right?

16 MS. LENT: Object to the form.

17 THE WITNESS: Could you clarify what you
18 mean by "a substantial investment"?

19 BY MR. ERWIG:

20 Q. Well, the hospital has to spend money to
21 buy a da Vinci robot; right?

22 A. A hospital traditionally does have to spend
23 money to buy a robot, yes.

24 Q. It likely has to train surgeons how to use
25 that robot; right?

1 A. That is correct.

2 Q. So if Intuitive doesn't service that robot
3 and the robot fails, it means the hospital can no
4 longer do surgeries with that robot; right?

5 A. That is correct.

6 Q. So if Intuitive hears that a hospital is
7 using reprogrammed instrumentation on a da Vinci
8 robot, ultimately, Intuitive will not service that
9 da Vinci robot; right?

10 A. Following the steps that we discussed, we
11 may end up declining to service the robot. That is
12 correct.

13 Q. And, ultimately, when hospitals have
14 continued to use these EndoWrists that have been
15 reprogrammed by a third party, Intuitive has, in
16 fact, terminated sales agreements and refused to
17 service da Vinci robots; right?

18 A. That is correct.

19 Q. And so it's certainly not true that there's
20 no consequence to a hospital that wants to use
21 reprogrammed EndoWrists on its da Vinci robots;
22 right?

23 A. That is correct.

24 Q. In fact, Intuitive aggressively enforces
25 its sales contracts to ensure that hospitals don't

1 engage in that type of activity; right?

2 MS. LENT: Object to the form.

3 THE WITNESS: I would say that we
4 aggressively pursue the terms of our agreement with
5 our customers. That is correct.

6 BY MR. ERWIG:

7 Q. That agreement that's the sales and
8 licensing agreement, it's a contract with a
9 customer; right?

10 A. That is correct.

11 Q. And Intuitive enforces the terms of that
12 contract to stop the customer from using
13 reprogrammed EndoWrists; right?

14 A. Among other things that we, yeah, pursue
15 contract enforcement for, which may include
16 nonpayment or other recourse as needed.

17 Q. Now, sir, is there any proof that you can
18 identify that EndoWrist cannot be used beyond the
19 specified number of lives on the use counter?

20 A. Did we lose Karen?

21 THE STENOGRAPHER: It looks like it.

22 MR. ERWIG: Yeah, we did.

23 THE WITNESS: We'll stop and wait for her
24 to rejoin?

25 MR. ERWIG: Let's go off the record.

1 THE VIDEOGRAPHER: The time is 4:07 p.m.,
2 and we are off the record.

3 (Recess taken from 4:08 to 4:12.)

4 THE VIDEOGRAPHER: The time is 4:12 p.m.,
5 and we are back on the record.

6 BY MR. ERWIG:

7 Q. Mr. Bair, is there any proof that you can
8 point the jury to that EndoWrists cannot actually be
9 used beyond the specified number of lives on the use
10 counter?

11 A. I was not involved in the validation of the
12 instruments and the provision of that data to the
13 FDA which predicated their decision related to its
14 authorization to be marketed and sold. So I don't
15 have access to that information.

16 Q. Sir, you're aware that hospitals have
17 repeatedly asked Intuitive to provide scientific
18 readout indicating that EndoWrists cannot be safely
19 repaired; right?

20 MS. LENT: Object to the form.

21 THE WITNESS: I'm aware of one instance
22 where that information has been requested.

23 MR. ERWIG: Let's look at a few. The next
24 one -- exhibit is going to be in Folder 4. This
25 will be 2'13'19, Otradovec to Bair and Rawls.

1 I'll screen share this with you.

2 THE STENOGRAPHER: And this will be
3 Exhibit 19?

4 MR. ERWIG: Exhibit 19. Thank you, Lorrie.
5 (Marked for identification purposes,
6 Exhibit 19.)

7 BY MR. ERWIG:

8 Q. Mr. Bair, do you see this on the screen in
9 front of you?

10 A. Yes.

11 Q. I'll scroll down to an earlier e-mail from
12 Tony Johnson to Chace Rawls, others at
13 bswhealth.org, copying John Wagner and Lindsey
14 Otradovec at Intuitive Surgical.

15 Do you see that?

16 A. I do. You did a good job with the
17 pronunciation, Otradovec, initially. So...

18 Q. Otradovec. Thanks.

19 Then it appears that this e-mail chain was
20 ultimately forwarded on to you by Ms. Otradovec; is
21 that right?

22 A. Yes. That is correct.

23 Q. Do you recognize this e-mail chain?

24 A. I recognize the bottom of the e-mail chain
25 because I was engaged in the response, and so the

1 rest of it is modestly familiar to me.

2 Q. I want to start, actually, with this first
3 e-mail in the e-mail chain. You see there's a --
4 withdrawn.

5 Who is Tony Johnson?

6 A. I recall he was the senior vice president.
7 I don't remember what the aggregated function was,
8 but it included biomedical engineering for Baylor
9 Scott & White. It may have been the -- a supply
10 chain or something to that effect.

11 Q. Now, I want to point to the first piece of
12 information requested by BSWH in this e-mail, which
13 is, "Provide documentation of the latest FDA
14 certifications for Xi and SI robots, and proving the
15 FDA granted the 510(k) based on a required
16 limitation of the number of uses per EndoWrist
17 instrument."

18 Do you see that?

19 A. I do.

20 Q. Was Intuitive able to provide documentation
21 that proved that the FDA granted a 510(k) based on a
22 required limitation of the number of uses per
23 EndoWrist instrument?

24 A. If we could pull up the actual response, I
25 would certainly be able to speak to those specifics,

1 but it was crafted by multiple individuals and spoke
2 to or addressed each of those questions articulated
3 under the information requested by BSWH.

4 Q. Well, we'll look at the rest of the e-mail
5 chain in a minute, sir. I'm interested right now in
6 your understanding of the FDA's granting of a
7 510(k). And so I want to just focus in on the
8 specifics of that question.

9 Is it your understanding that the FDA
10 granted the EndoWrist based on a required number of
11 uses?

12 MS. LENT: Object to the form.

13 THE WITNESS: It is not my understanding
14 that the FDA specifies the actual functional
15 parameters or limitations of medical devices but
16 rather approves or authorizes them based on the
17 manufacturer's specifications and the data generated
18 and provided to the FDA to support the submission.

19 BY MR. ERWIG:

20 Q. I'm going to scroll up. In the next e-mail
21 Ms. Otradovec sends an e-mail to Mark Johnson, Mario
22 Lowe, copying Chace Rawls and Katie Scoville, where
23 she writes, "Mark and Mario, can you provide me with
24 any of the documentation for Number 1 below." Do
25 you see that?

1 A. Yes.

2 Q. Who is Mario Lowe?

3 A. His title is on one of the -- well, at that
4 time he appeared to be the senior director of
5 regulatory affairs. I believe now he is the vice
6 president of regulatory affairs and quality
7 assurance.

8 Q. Mr. Lowe replies, "Hi, Lindsey: We can
9 certainly provide the latest FDA 510(k) clearance
10 letters. But this will not provide the information
11 requested in Item 1 below."

12 Then -- do you see that?

13 A. Yes, I do.

14 Q. Mr. Lowe goes on to say, "Just so you know,
15 FDA does not require nor limit the number of uses
16 for our EndoWrist instruments."

17 Do you see that?

18 A. I do.

19 Q. Is it your understanding that the FDA does
20 not require nor limit the number of uses for
21 Intuitive's EndoWrist instruments?

22 A. That is correct.

23 Q. Now I want to turn to the e-mail where
24 Ms. Otradovec forwards this e-mail chain to you.
25 And she writes, "This tells me that they are being

1 coached by restore robotics, or whoever the company
2 is, to say, 'Give me the proof you can't use the
3 instruments more than X lives.'"

4 Do you see that?

5 A. Yes, I do.

6 Q. Is there a specific piece of proof that you
7 can offer that instruments cannot safely be used
8 more than a certain number of lives after
9 appropriate repairs?

10 MS. LENT: Object to the form.

11 THE WITNESS: As mentioned previously, I
12 have not been engaged in the validation and
13 verification of products developed for submission to
14 the FDA for approval, and so I don't know that I
15 could speak to that.

16 Also, the question is somewhat vague as it
17 relates to what repair constitutes.

18 BY MR. ERWIG:

19 Q. Well, there's certain things that can wear
20 down on EndoWrists over time; right?

21 MS. LENT: Object to the form.

22 THE WITNESS: In addition to other things
23 that can happen to instruments over time, yes, they
24 wear.

25 ///

1 BY MR. ERWIG:

2 Q. Instruments can break; right?

3 A. That is correct as well.

4 Q. And you're aware that traditional
5 laparoscopic instruments, those wear and break over
6 time as well; right?

7 A. I would suspect that that is true, although
8 I don't have experience with traditional
9 laparoscopic instruments.

10 Q. And you know that traditional laparoscopic
11 instruments have been repaired by hospitals for
12 decades?

13 MS. LENT: Object to the form.

14 THE WITNESS: I am not aware of repair for
15 traditional laparoscopic instruments.

16 BY MR. ERWIG:

17 Q. Now, has Intuitive ever performed any
18 specific testing that would indicate that an
19 EndoWrist that has been safely repaired or
20 refurbished can operate well beyond its use counter?

21 A. We went over that, I think, close to the
22 beginning of this as it related to our exploration
23 of the viability of refurbishment.

24 Meaning, yes, we have explored if
25 refurbishing -- what we deem to be refurbishment or

1 remanufacturing is safe and economically viable.

2 Q. The conclusion was that it would likely be
3 safe but would probably not be economically viable
4 for Intuitive at the time; is that right?

5 MS. LENT: Object to the form. Asked and
6 answered.

7 THE WITNESS: The conclusion was not
8 necessarily that it would likely be safe, but not --
9 we did not conclude that it was impossible to render
10 the instrument after being appropriately
11 remanufactured.

12 BY MR. ERWIG:

13 Q. But you concluded that it was not
14 economically viable for Intuitive at the time;
15 right?

16 A. The decision as it related to economic
17 viability wasn't something that I was engaged in
18 making. I did the analysis. And the decision as to
19 whether to pursue it or not was made based on, I
20 would say, multiple factors, one of which I would
21 anticipate is the economic impact of it, which is
22 why I was engaged to provide that analysis.

23 Q. And, sir, you certainly understand that
24 it's more profitable for Intuitive to continue
25 selling its customers new EndoWrists than it is to

1 refurbish and sell refurbished EndoWrists to
2 customers; right?

3 A. I do not understand that.

4 Q. Is it your contention that -- well,
5 withdrawn.

6 Is it your understanding that the
7 refurbishment program would, in fact, be more
8 profitable to Intuitive than selling new
9 instruments?

10 A. That is not my understanding either. We
11 did some financial modeling based on potential price
12 points, but the market, the price elasticity, the
13 demand elasticity, all of those things remained
14 unproven from my perspective as it relates to what
15 the projected economic viability is.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 BY MR. ERWIG:

13 Q. Well, sir, let's make it simpler and look
14 at what's happened in the real world.

15 Since 2017 Intuitive hasn't offered a
16 refurbished instrument program; right?

17 MS. LENT: Objection. Asked and answered.

18 THE WITNESS: That is correct.

19 BY MR. ERWIG:

20 Q. Now, if that program had been wildly
21 profitable for Intuitive, you would expect that
22 Intuitive would have brought that to market; right?

23 MS. LENT: Objection.

24 THE WITNESS: I don't know that that would
25 be the case. As I mentioned, the decision, as it

1 relates to the portfolio of products that we would
2 intentionally develop and request approval for and
3 deploy, is well beyond the profitability
4 implications of those products. The greatest
5 intention is in furtherance of our mission. And for
6 that reason there are variable price and margin
7 points associated with the products in our
8 portfolio.

9 BY MR. ERWIG:

10 Q. Sir, Intuitive wants to make money; right?

11 MS. LENT: Object to the form.

12 THE WITNESS: Intuitive's mission is not to
13 make money.

14 BY MR. ERWIG:

15 Q. Is Intuitive a publicly traded company?

16 A. Intuitive is a publicly traded company.

17 Q. Is it your understanding that Intuitive has
18 a duty to maximize the value of its stock price for
19 its shareholders?

20 MS. LENT: Object to the form.

21 THE WITNESS: I would agree that Intuitive
22 has a duty to -- I don't know the maximized stock
23 price is the intention, but total shareholder return
24 is important as it relates to the investment grade
25 of any equity in the market.

1 BY MR. ERWIG:

2 Q. To make that simpler, that means that one
3 of the duties that Intuitive has is to deliver
4 returns for its shareholders in terms of money;
5 right?

6 MS. LENT: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: I don't know that I could
9 speak to the intent of each of the investors in
10 Intuitive.

11 BY MR. ERWIG:

12 Q. Well, sir, you understand in your role as a
13 product manager you're generally trying to develop
14 products that are going to be profitable for
15 Intuitive; right?

16 A. I understand in the words of a very wise
17 nun who was working at a nonprofit hospital, no
18 money, no mission. So I do acknowledge that making
19 money is important as it relates to the development
20 and production of advanced medical devices that can
21 improve care.

22 Q. We looked at the refurbished EndoWrists as
23 potentially opening up a broader market for some
24 customers to where the normal EndoWrist would
25 normally be cost prohibitive; right? That was one

1 of the things you examined?

2 MS. LENT: Object to the form.

3 THE WITNESS: I believe one of the
4 objectives was potentially as it related to markets
5 or more cost-sensitive procedures. I don't know
6 that it was specifically related to individual
7 customers.

8 BY MR. ERWIG:

9 Q. Well, the refurbished instrument program,
10 it was your understanding that that program would
11 potentially expand the range of da Vinci surgeries
12 to other cost-sensitive procedures; right?

13 A. That may have been one mode or mechanism
14 through which we may have been able to achieve that
15 objective. That is correct.

16 Q. Intuitive never adopted a refurbished
17 instrument model despite the potential to impact new
18 markets; right?

19 MS. LENT: Objection. Asked and answered.

20 THE WITNESS: We have not launched a
21 refurbished program.

22 BY MR. ERWIG:

23 Q. Sir, that's because that refurbished
24 program, that would be a money loser for Intuitive;
25 right?

1 MS. LENT: Objection. Asked and answered.

2 THE WITNESS: As previously stated, there
3 are many reasons why we may decide to engage or not
4 engage in any specific business practices or the
5 development of products within our portfolio and our
6 road map.

7 MR. ERWIG: I'm going to screen share our
8 next exhibit. This will be Plaintiff's Exhibit 20.
9 This will be 8'15'19 Bair to Davis.

10 (Marked for identification purposes,
11 Exhibit 20.)

12 BY MR. ERWIG:

13 Q. Do you see this on the screen in front of
14 you, Mr. Bair?

15 A. Yes, I do.

16 Q. Do you recognize this?

17 A. Yes, I do.

18 Q. How do you recognize it?

19 A. It was -- the communication was forwarded
20 to me in advance of a visit that I was making to --
21 I believe it was the New Orleans area where this
22 customer may have been located.

23 Q. I want to scroll down to the first e-mail.

24 Who is Sherry Harvey?

25 A. She appears to have been the chief nursing

1 officer at Crescent City Surgical Centre.

2 Q. I want to point to some of the bullet
3 points in Ms. Harvey's e-mail.

4 In the first bullet Ms. Harvey writes,
5 "Please explain the notion that we have engaged in
6 the 'usage of unauthorized instrumentation.' What
7 gives Intuitive Surgical the right to determine how
8 Crescent City Surgical Centre uses instruments that
9 we own?"

10 Do you see that?

11 A. I do.

12 Q. Then in the second bullet point, Ms. Harvey
13 writes, "Please provide data that demonstrates that
14 patient safety is impacted by the safe, controlled
15 repair and reuse of robotic instruments."

16 Do you see that?

17 A. That is correct.

18 Q. Then Ms. Harvey goes on to say, "In lieu of
19 data that directly demonstrates this, please provide
20 any indication that patient safety is compromised.
21 Patient safety is our first concern, but we do not
22 act on vendor statements about safety; we act on
23 science."

24 Do you see that?

25 A. She was saying it a long time before all

1 the people were about COVID. Yes, I do.

2 Q. Were you able to provide Ms. Harvey with an
3 indication that patient safety was compromised by
4 the safe, controlled repair and reuse of robotic
5 instruments with the da Vinci surgical system?

6 A. I don't recall the final disposition of the
7 response to Ms. Harvey, but I am aware that it is
8 not incumbent on Intuitive to prove the safety or
9 efficacy of a third-party device or a device that
10 has been modified by a third party such that it is
11 rendered no longer an approved FDA device.

12 Q. Well, sir, that wasn't quite my question.
13 So let me reask it and focus on the question itself.

14 Were you able to provide Ms. Harvey with
15 any data that demonstrated that patient safety was
16 impacted by the safe, controlled repair and reuse of
17 robotic instruments?

18 MS. LENT: Objection to form.

19 THE WITNESS: I do not recall providing
20 data to Ms. Harvey related to products that have
21 been modified by other entities.

22 BY MR. ERWIG:

23 Q. Were you able to provide any indication to
24 Ms. Harvey that patient safety is comprised by the
25 safe, controlled repair and reuse of robotic

1 instruments?

2 MS. LENT: Object to the form.

3 THE WITNESS: We may have communicated to
4 Ms. Harvey that it was our understanding that these
5 modified devices were not approved by the
6 appropriate regulatory body whose principal aim and
7 objective is to protect patients as it relates to
8 both pharmaceuticals and medical devices. And so I
9 don't recall providing anything beyond that.

10 BY MR. ERWIG:

11 Q. I want to go to the next bullet point where
12 Ms. Harvey writes, "How does repair and reuse of
13 robotic instruments compromise 'product
14 performance'?"

15 Do you see that?

16 A. I do.

17 Q. Ms. Harvey writes, "We have audited the
18 quality system and testing protocols of our robotic
19 instrument repair partner as well as several
20 independent reports about materials degradation, and
21 we find no indication that the functionality of
22 robotic instruments is compromised when reusing the
23 instruments beyond the limited number of times
24 suggested by Intuitive Surgical."

25 Do you see that?

1 A. Yes, I do.

2 Q. Then Ms. Harvey asks, "Please provide test
3 results, studies, or data that document why the
4 instruments should be limited to 10 or 15 uses."

5 Do you see that?

6 A. I do.

7 Q. Did Intuitive perform any research as to
8 the functionality of robotic instruments that were
9 repaired by Ms. Harvey's robotics instrument repair
10 partner?

11 A. I'm not privy to. We may have engaged in
12 as it relates to testing of those products. I don't
13 believe that we were provided the opportunity to
14 partner with that organization that was engaging it,
15 and it was outside of my purview to explore those
16 sorts of questions.

17 Q. Mr. Bair, can you point the jury to any
18 scientific evidence that indicates that repair of
19 robotic instruments cannot safely be used for
20 surgery?

21 A. That is outside the scope of my
22 responsibilities as I do not engage in verification
23 and validation of our products prior to submission
24 to the FDA.

25 Q. Well, Ms. Harvey is certainly saying that

1 the robotic repair program is important in her
2 hospital's efforts to provide the best possible care
3 for her patients.

4 Do you see that?

5 A. I do see that.

6 Q. Then Ms. Harvey is asking some questions of
7 Intuitive to understand your claims about patient
8 safety.

9 Do you see that?

10 A. That is -- yes, I do see that.

11 Q. And were you able to provide any data to
12 Ms. Harvey in response to that request that the
13 safe, controlled repair and reuse of robotic
14 instruments was, in fact, compromising patient
15 safety?

16 MS. LENT: Objection. Asked and answered.

17 THE WITNESS: I believe the intent -- the
18 intent and spirit of our response was as it related
19 to compliance with the contract or the sales
20 licensing and service agreement that we'd engaged in
21 with Crescent City as well as our understanding and
22 awareness that Crescent City was using devices that
23 were not approved by the FDA or other regulatory
24 bodies.

25 ///

1 BY MR. ERWIG:

2 Q. Hospitals care about patient safety; right?

3 MS. LENT: Objection.

4 THE WITNESS: I don't know that I can speak
5 to all of the things that hospitals care about.

6 BY MR. ERWIG:

7 Q. Well, is it your understanding that
8 hospitals don't care about patient safety?

9 A. That is generally not my understanding.

10 Q. Is it generally your understanding that
11 hospitals, in fact, care very deeply for patient
12 safety?

13 MS. LENT: Objection.

14 THE WITNESS: I refer to my previous
15 response.

16 BY MR. ERWIG:

17 Q. Well, it's a question of your
18 understanding, sir, as it relates to hospitals. And
19 so I'll reask the question. Withdrawn.

20 Is it your understanding that hospitals
21 care about patient safety?

22 A. It is my understanding that that is an
23 element of the multitude of things that hospitals
24 care about.

25 Q. Ms. Harvey is, in fact, asking some

1 questions to determine whether Intuitive has any
2 data about the safety of repair of robotic
3 instruments; right?

4 MS. LENT: Objection. Asked and answered.

5 THE WITNESS: That is what she appears to
6 be asking about.

7 BY MR. ERWIG:

8 Q. Intuitive didn't provide any such data;
9 right?

10 MS. LENT: Objection. Asked and answered.

11 Can we move on?

12 THE WITNESS: I do not believe that we
13 provided data in response to this.

14 BY MR. ERWIG:

15 Q. Are you, in fact, aware, Mr. Bair, of any
16 data that was provided to any hospital that asked
17 Intuitive for data on patient safety related to the
18 repair and reuse of robotic instruments?

19 A. As I mentioned before, that's -- the data
20 related to verification and validation to
21 demonstrate the safe and effective use of these
22 products in the marketplace is outside of my
23 purview. And so I am not personally aware of any
24 instances where data has been provided, but there
25 certainly may have been as we are a fairly large

1 organization. And, again, I'm not an expert and/or
2 engaged in that space.

3 Q. Can you personally point to any data that
4 you've seen that indicates that repaired robotic
5 instruments are not able to be used safely by
6 hospitals?

7 MS. LENT: Objection. Asked and answered.

8 THE WITNESS: There was a reference in one
9 of the exhibits that we explored earlier in the day.
10 For example, the failure modes that were experienced
11 when instruments were attempted to -- where we
12 attempted to use them beyond their validated number
13 of lives. That's the extent to which that I have
14 personal exposure to anecdotal results of life
15 testing. But, again, that is outside of my purview
16 and area of responsibility.

17 BY MR. ERWIG:

18 Q. Now, sir --

19 We can stop screen sharing this exhibit.

20 Now, sir, you personally had communications
21 with hospitals that were using third-party repair
22 services for Intuitive's EndoWrists; is that right?

23 A. That is correct.

24 Q. In any of your communications with any of
25 those third-party -- withdrawn.

1 In any of your communications with any of
2 those hospitals that utilized third-party repair
3 services, were you able to provide any data that the
4 patient safety was compromised by safely repaired
5 EndoWrists?

6 MS. LENT: Objection. Asked and answered.

7 THE WITNESS: Would you reframe the
8 question? I don't know that I agree that there are
9 safely repaired EndoWrist instruments out there as I
10 have not personally had the opportunity to see or
11 validate the safe repair of EndoWrist instruments.

12 BY MR. ERWIG:

13 Q. Well, my question is when hospitals --
14 withdrawn.

15 You've met with hospitals that utilize
16 third-party repair services for EndoWrist; right?

17 A. That is correct.

18 Q. In those meetings were you ever able to
19 provide any of those hospitals with any data
20 indicating that repaired EndoWrists would compromise
21 patient safety?

22 A. The direction of the conversations given my
23 scope -- the scope of my function and conversations
24 that I am equipped to engage in focused on their
25 compliance or noncompliance with our agreement.

1 Again, data as it relates to the safe
2 functioning of the robots or any instruments and
3 accessories used in conjunction with them is outside
4 of my purview and understanding.

5 Q. So your role was to interface with the
6 hospital and let them know they were not in
7 compliance with the contract with Intuitive; is that
8 right?

9 A. That is correct.

10 Q. You let the hospitals know that Intuitive
11 considered them in violation of their contract for
12 using third-party instruments; right?

13 A. If, in fact, they were. In addition to
14 other elements of the Intuitive team, yes, I was
15 engaged in those conversations and partnerships
16 sometimes with sales or the regulatory folks,
17 et cetera.

18 MR. ERWIG: Let's go off the record.

19 THE VIDEOGRAPHER: The time is 4:40 p.m.,
20 and we are off the record.

21 (Recess taken from 4:40 to 4:48.)

22 THE VIDEOGRAPHER: The time is 4:48 p.m.,
23 and we are back on the record.

24 MR. ERWIG: I'm going to screen share our
25 next exhibit. This will be in Folder 5. This is

1 6'14'19 Little to Bair.

2 (Marked for identification purposes,
3 Exhibit 21.)

4 BY MR. ERWIG:

5 Q. Mr. Bair, do you see this on the screen in
6 front of you?

7 A. I do.

8 Q. Do you recognize this?

9 A. No, I don't yet.

10 Q. Does this appear to be an e-mail from
11 Rachelle Little to yourself?

12 A. It does.

13 Q. Sent on June 14th, 2019?

14 A. Yes.

15 Q. There's an attachment that's "DRAFT Finance
16 Quick Start Guide Rev F.docx."

17 Do you see that?

18 A. Yes. And now it more so does ring a bell.

19 Q. And can you explain what you mean by it
20 rings a bell?

21 A. Meaning I do recall very likely the subject
22 matter. I don't specifically recall sending this
23 e-mail, but I know Rachelle and her position at that
24 time and likely what the attachment was.

25 Q. And what was Rachelle's position at that

1 time?

2 A. She was a rotational finance analyst within
3 the services organization -- or excuse me --
4 supporting the services organization. She was with
5 the finance organization.

6 Q. Did you receive this e-mail and the
7 attached draft finance quick start guide?

8 A. Yes.

9 MR. ERWIG: I'm going to stop screen
10 sharing this exhibit. Our next exhibit will be the
11 attachment to this e-mail. This is 6'14'19 Attach
12 to Little to Bair.

13 THE STENOGRAPHER: This will be 22.

14 (Marked for identification purposes,
15 Exhibit 22.)

16 BY MR. ERWIG:

17 Q. Do you see this on the screen in front of
18 you, Mr. Bair?

19 A. I do.

20 Q. Do you recognize this document?

21 A. Yes, I do.

22 Q. It would appear to be a document titled
23 "ISI's Equation for Employee Success"?

24 A. That is correct.

25 Q. I just want to talk about some of the

1 bullet points here with you. There's a column
2 labeled "Individual Expectations."

3 Do you see that?

4 A. I do.

5 Q. One of the bullet points under that is
6 "Integrity - I never bend or wink at the truth."

7 Do you see that?

8 A. I do.

9 MS. LENT: Alexander, can you make that a
10 little bit bigger? It's really hard to see even
11 with my reading glasses on. Thank you.

12 MR. ERWIG: How's that?

13 BY MR. ERWIG:

14 Q. Then there's a column labeled "Character."

15 Do you see that?

16 A. I do.

17 Q. And there's a few bullet points. The first
18 one reads "Will not wink or bend at the truth."

19 Do you see that?

20 A. That is correct.

21 Q. And the third bullet point reads, "Answers
22 questions consistently regardless of audience."

23 Do you see that?

24 A. I do.

25 Q. Are these all characteristics that

1 Intuitive expects its employees to embody?

2 A. Yes, they are.

3 MR. ERWIG: Stop screen sharing this
4 exhibit.

5 I have no further questions at this time.

6 MS. LENT: I don't have any questions
7 myself. Thank you.

8 MR. ERWIG: Thank you, Mr. Bair.

9 We can go off the record.

10 THE VIDEOGRAPHER: Before we do go off the
11 record, can I have all counsel state copy orders.

12 MS. LENT: We have a standing order.

13 THE VIDEOGRAPHER: Okay. Perfect.

14 MS. LENT: Thank you.

15 THE VIDEOGRAPHER: Thank you.

16 This concludes today's deposition given by
17 Rob Bair. Total media units used, 3 hours and 27
18 minutes. The time is 4:52 p.m., and we are now off
19 the record.

20 (Deposition concluded at 4:52 p.m. PDT.)

21 ---oOo---

22

23

24

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1 CERTIFICATE OF WITNESS

2
3
4
5 I, the undersigned, declare under penalty
6 of perjury that I have read the foregoing
7 transcript, and I have made any corrections,
8 additions or deletions that I was desirous of
9 making; that the foregoing is a true and correct
10 transcript of my testimony contained therein.

11
12 EXECUTED this _____ day of _____,
13 20____ at _____, _____.

14
15
16 _____
17 RONALD LEE BAIR, JR.
18
19
20
21
22
23
24
25

1 STENOGRAPHER'S CERTIFICATE

2 I, LORRIE L. MARCHANT, Certified Shorthand
3 Reporter, Certificate No. 10523, for the State of
4 California, hereby certify that RONALD LEE BAIR, JR.
5 was by me duly sworn/affirmed to testify to the
6 truth, the whole truth and nothing but the truth in
7 the within-entitled cause; that said deposition was
8 taken at the time and place herein named; that the
9 deposition is a true record of the witness's
10 testimony as reported to the best of my ability by
11 me, a duly certified shorthand reporter and a
12 disinterested person, and was thereafter transcribed
13 under my direction into typewriting by computer;
14 that request [] was [X] was not made to read and
15 correct said deposition.

16 I further certify that I am not interested
17 in the outcome of said action, nor connected with,
18 nor related to any of the parties in said action,
19 nor to their respective counsel.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 25th day of May, 2021.

22
23 _____
24 LORRIE L. MARCHANT, RMR, CRR, CCRR, CRC
25 Certified Shorthand Reporter #10523

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3 EXAMINATION BY PAGE

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12 (Intuitive-00361334 -
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16 eX: I&A Refurbishment
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25

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3 Exhibit 20 e-mail correspondence, dated 151
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 6 ---oOo---

7 QUESTIONS INSTRUCTED NOT TO ANSWER

8 PAGE LINE

9 10 23

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1 NAME OF CASE: Rebotix Repair v. Intuitive Surgical

2 DATE OF DEPOSITION: 5/24/2021

3 NAME OF WITNESS: RONALD LEE BAIR, JR.

4 Reason Codes:

5 1. To clarify the record.

2. To conform to the facts.

6 3. To correct transcription errors.

7 Page _____ Line _____ Reason _____

From _____ to _____

8

Page _____ Line _____ Reason _____

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10 Page _____ Line _____ Reason _____

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21 From _____ to _____

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23

24 _____
RONALD LEE BAIR, JR.

25

Exhibit 5



November 26, 2019

Dr. Eric Pifer, Chief Medical Officer
 Lee Domanico, Chief Executive Officer
 Jon Friedenber, President & Chief Operations Officer
 Marin General Hospital
 250 Bon Air Road
 Greenbrae, California 94904

Dear Mr. Pifer, Mr. Domanico, and Mr. Friedenber:

We understand that Marin General Hospital is using or considering using "refurbished" EndoWrist® instruments, obtained from and/or modified by a third party for use beyond the programmed number of uses. The programmed number of uses, as indicated in the product labeling, represents the validated intended use of the product documented and submitted to authorities. Intuitive strongly discourages the procuring of its products through unauthorized channels and/or using its products that have been modified to work beyond the pre-programmed number of uses.

Extended Instrument Use Can Impact Product Performance and Patient Safety

All Intuitive products are designed and tested to achieve a targeted level of safety, precision, and dexterity over the programmed number of instrument uses. Gradual degradation of the instrument occurs both from use in surgery as well as repeated cleaning and sterilization cycles required between uses. Examples of degraded performance may include, but are not limited to:

- Unintuitive motion (i.e. instruments do not track well with master manipulators; unexpected motion or stalls);
- Insufficient grip force;
- Dull or damaged scissor blades;
- Worn/damaged cables.

With continued use beyond the instrument's determined useful life, the wear and tear from these additional uses may reduce these levels of safety, precision and dexterity.

In addition, in light of the prescribed cleaning and sterilization processes for the Intuitive instruments, device handling and modification by an outside party that deviates from validated processes submitted and cleared by regulatory authorities may cause instrument damage that could create patient safety issue. Third party remanufacturers or refurbishers may use non validated or incompatible cleaning agents and/or disinfection/sterilization processes, which are likely to damage the instruments, negatively affecting product performance.

Further, third party remanufacturers or refurbishers may damage the instrument's internal mechanisms that interface with the robotic system and allow Intuitive to monitor the device. In sum, the use of third party remanufacturers or refurbishers may affect the operation of the Instrument thereby jeopardizing patient safety.

Extended Instrument Uses: Impact to Regulatory Clearances and Safety Precautions

All of Intuitive's medical devices, including EndoWrist® instruments, are evaluated by the United States Food and Drug Administration ("FDA") and/or other international regulatory agencies to assess the safety and effectiveness of a device over its intended life and are cleared for use by those regulatory authorities.

Refurbishing activities performed by an unauthorized third party violate the U.S. Federal Food, Drug, and Cosmetic Act ("FDC Act") and the regulations promulgated and enforced thereunder by the FDA when

such activities do not bring products to established specifications or when such activities change intended uses. Deviation from these specifications might prevent such products from performing properly, thereby subjecting patients to significant risk. By using a third party remanufacturer or refurbisher, the hospital has no way to know whether the refurbished instrument meets the rigorous specifications as established by Intuitive Surgical and cleared by the FDA or other regulators. Moreover, the regulatory clearance provided to Intuitive by the FDA and other regulatory authorities may not apply to products that have been remanufactured or refurbished by unauthorized third parties.

Refurbishing activities performed by an unauthorized third party that change intended uses or modify the control mechanisms of the device may constitute the entry of adulterated and misbranded products to the marketplace. Specifically, the manufacture and entry into commerce of a medical device that does not meet specifications renders the product adulterated under 21 U.S.C. § 351. Moreover, any modification to allow for use of a da Vinci product beyond its labeled useful life exceeds the scope of the original clearance by expanding the FDA cleared indications for use. Engaging in such activities without first obtaining a new clearance to do so misbrands the product under 21 U.S.C. § 351. The cited provisions of the FDC Act and FDA's implementing regulations help to protect the public health by ensuring that medical devices are shown to be either safe and effective or substantially equivalent to other devices already legally marketed and that the products were designed, manufactured and serviced in a controlled manner to ensure that they meet designated specifications.

Furthermore, acquiring da Vinci System surgical products through unauthorized channels may violate the hospital's internal policies, which violation may include not obtaining proper patient's and/or surgeon's consent for the use of an altered or adulterated device on the patient.

Your Contract with Intuitive

We presume that you are aware that, in connection with Marin General Hospital's purchase of *da Vinci* Surgical products, Marin General Hospital entered into Sales, License, and Service Agreements in 2007 and 2013 (each referred to herein as "Agreement" or collectively as "Agreements").¹ Using instruments beyond the programmed number of uses is a material breach of the Agreements. Here are summarized terms of the Agreements that you might wish to consider:

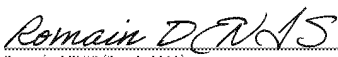
- Instruments and Accessories are subject to a limited license to use those Instruments and Accessories with, and prepare those Instruments and Accessories for use with, the System. Any other use is prohibited, whether before or after the Instrument or Accessory's license expiration, including repair, refurbishment, or reconditioning not approved by Intuitive. This license expires once an Instrument or Accessory is used up to its maximum number of uses specified in the documentation accompanying the Instrument or Accessory. [2007 Agreement § 2.5(b), 2013 Agreement § 8];
- Under the section titled "Use of System", Customer agreed that it will not, nor will Customer permit any third party to, modify, disassemble, reverse engineer, alter, or misuse the System or Instruments and Accessories. Further, if Customer fails to comply with the requirements of this section, any warranties applicable to the System will become void and Intuitive may terminate the Agreement for material breach. [2007 Agreement § 2.3(a) and § 5, 2013 Agreement § 3.4];
- Moreover, Intuitive will not be liable for, and Customer will indemnify and hold Intuitive harmless from and against, any claims or damages caused by Customer's failure to comply with the requirements of the section titled "Use of System". [2007 Agreement § 2.3(a) and § 6.2, 2013 Agreement § 11.2].

¹ Capitalized terms in this section have the same meaning as set forth in the Agreement.

In addition to the above, Intuitive believes that it has important intellectual property rights in the da Vinci system and its instruments. You may want to be sure that a vendor offering "reprogrammed instruments" is not violating intellectual property rights that belong to Intuitive.

Based on the terms of the Agreement and the patient safety implications of the Systems being used with instruments refurbished by an unauthorized third party, Intuitive may no longer accept your service calls for such Systems. Should Intuitive or its personnel determine, after having accepted a service call or a purchase order for a service call, such as after an Intuitive Field Service Engineer arrives at your site for a service call, that the System has been used with instruments refurbished or modified by an unauthorized third party, Intuitive may not provide service for such a System. Please contact Intuitive's Director of External Affairs, Dan Jones (dan.jones@intusurg.com), if you have any further questions.


Sincerely,

Signature: 
Romain DENIS (Dec 2, 2019)

Email: romain.denis@intusurg.com

Title: VP, Regulatory Affairs and Quality Assurance

Company: Intuitive Surgical

Signature: 
Kara Andersen-Reiter (Nov 28, 2019)

Email: kara.reiter@intusurg.com

Title: SVP, General Counsel, Chief Compliance Officer

Company: Intuitive Surgical

CC:
 Gabrielle Javier, Robotics Coordinator
 Michael Geremia, Surgical Services Director
 Dr. James Yu, Robotics Medical Director

Exhibit 6

From: Dan Jones [Dan.Jones@intusurg.com]
Sent: 11/26/2019 11:06:37 AM
To: Becky Cokeley [Becky.Cokeley@intusurg.com]
CC: AJ Inacay [aj.inacay@intusurg.com]; Cyprian Okafor [Cyprian.Okafor@intusurg.com]
Subject: RE: Marin General- reprocessing Si instruments
Attachments: Rebotix Summary of Quality Reliability.pdf

AJ, Cyprian,

There is a close match between the "SIS" materials and the documents we'd seen earlier from Rebotix (attached). My guess would be that SIS is working with Rebotix.

Becky,

You seem to have very good relationships at the account and the information you provided is very helpful. It would be good if we could find out what ECRI's involvement is. Is it, as you suggest, that the account contacts are mis-interpreting analysis that ECRI did? Or is ECRI actually encouraging hospitals to utilize adulterated instruments? We have had on-going exchanges with ECRI over quite a few years and we might respond differently depending on what we think is the "right" answer. Thank you for any more insight or help you can provide.

Dan

From: AJ Inacay <aj.inacay@intusurg.com>
Sent: Tuesday, November 26, 2019 7:24 AM
To: Cyprian Okafor <Cyprian.Okafor@intusurg.com>; Dan Jones <Dan.Jones@intusurg.com>
Subject: FW: Marin General- reprocessing Si instruments

Good Morning,

Please see below and the attached pdfs.

AJ

From: Becky Cokeley <Becky.Cokeley@intusurg.com>
Sent: Monday, November 25, 2019 6:31 PM
To: Lucas Docter <Lucas.Docter@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Update on Marin from today:

- Met with OR Director and Director of Purchasing today. They made the decision about Si instrumentation strictly based on finances following a recommendation from a 3rd party consulting firm, ECRI.
- ECRI told Marin they were spending \$294,000 per year on Si instrument repairs. We talked through this in the meeting today and clarified that Intuitive does not repair our Si instruments. We believe the \$294,000 might be the total of Marin's I&A spend for the past year – but I'm waiting on Customer Service to help confirm this. We also reviewed dollars spent this year on Advanced Exchange.
- The company they are using for the Si instrument remanufacture is **SIS – Surgical Instrument Service Co, Inc.**
- This company claims to have 2 Intuitive engineers working for them and says they are already doing business with Kaiser and Banner.
- I have attached 2 documents I got from the customer today:
 - Summary of Quality and Reliability Measures
 - Da Vinci EndoWrist Repair FAQs

- I got a brief look at their pricing structure, which appears to be 40-50% discount. The MCS was \$1700 on this price list, for example.
- The customer does not want to risk patient safety, and after our dialogue, suggested that perhaps they made this decision based on false information about repairs.
- Once I have a chance to send the follow-up to Marin, we'll give them a day or so to digest and then circle back to see what their decision will be moving forward.

Happy to discuss any specifics or questions live. Have a great night,

Becky Cokeley
Area Sales Manager

Mobile: 707.637.6931
Becky.Cokeley@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: Lucas Docter <Lucas.Docter@intusurg.com>
Sent: Monday, November 25, 2019 9:29 AM
To: Bryce Partridge <Bryce.Partridge@intusurg.com>; Becky Cokeley <Becky.Cokeley@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Agreed, thank you, Becky!!

Lucas J. Docter
Regional Vice President, U.S. Key Accounts
Mobile: 281-639-4897
Lucas.Docter@IntuSurg.com

INTUITIVE

From: Bryce Partridge <Bryce.Partridge@intusurg.com>
Sent: Friday, November 22, 2019 8:14 PM
To: Becky Cokeley <Becky.Cokeley@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Becky,

I know this has consumed your last couple of days.....thank you on behalf of the team for handling such a sensitive subject and also thinking strategically about leveraging this into an Executive meeting.....who knows, Xi discussion?!?!?

Have a great weekend

Bryce Partridge
Area Sales Director – West

Mobile: 949-287-9272
Bryce.Partridge@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: Becky Cokeley <Becky.Cokeley@intusurg.com>
Sent: Friday, November 22, 2019 4:30 PM
To: AJ Inacay <aj.inacay@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Thanks AJ.

Quick update for the group:

- I have been in touch with the following individuals by phone:
 - Dr. James Yu, Urologist and Robotics Medical Director
 - Gabrielle Javier, Robotics Coordinator
 - John Ayers, Perioperative Purchasing Director (brief conversation, meeting with him live next week)
- I support proactively sending the letter, and suggest sending it to the following:
 - Robotics Coordinator – Gabrielle Javier
 - Surgical Services Director – Michael Geremia
 - Chief Medical Officer – Dr. Eric Pifer
 - Robotics Medical Director – Dr. James Yu
 - Chief Executive Officer - Lee Domanico
 - President & Chief Operations Officer - Jon Friedenber

I'm working to get in front of the C-suite next week. Will keep you posted. Please let us know if/when the letter goes out. Will it be mailed, or via email?

Thanks,

Becky Cokeley
Area Sales Manager

Mobile: 707.637.6931
Becky.Cokeley@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: AJ Inacay <aj.inacay@intusurg.com>

Sent: Friday, November 22, 2019 12:27 PM

To: Lucas Docter <Lucas.Docter@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>

Cc: Becky Cokeley <Becky.Cokeley@intusurg.com>; Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>

Subject: RE: Marin General- reprocessing Si instruments

Thank you Erin. I was able to sync up with Becky yesterday over the phone.

I checked our remanufactured instrument dashboard this morning and 3 remanufactured instruments were used at Marin General Hospital as of yesterday night (Nov 21st).

As we mentioned in the call this morning next steps are:

- Review the patient safety, regulatory, and contractual implications internally – Please let me know if you would like to dig into the details over WebEx
- Coordinate which team member/s will reach out to the account
- Reach out to the account over the phone or in person

Given the current situation at this customer account, we wanted to be proactive and send out a patient safety implications letter. If you agree to create a patient safety implications letter, please provide/confirm the names which the letter will be addressed to:

- Robotics Coordinator – Gabrielle Javier
- Surgical Services - ?
- Lead Surgeons or Chief Medical Officer – Eric Pifer
- C-Suite - Lee Domanico

We are free to adjust the addressee list accordingly so please let me know if any adjustments need to be made. Please do not hesitate to contact me if you have any further questions.

AJ Inacay

Product Marketing Manager – I&A Services

Mobile: 1 925 416 9912

Direct: 1 408 523 7973

aj.inacay@intusurg.com

INTUITIVE

3410 Central Expressway
Santa Clara, CA 95051 USA
intuitive.com

From: Lucas Docter <Lucas.Docter@intusurg.com>

Sent: Friday, November 22, 2019 8:31 AM

To: Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>

Cc: Becky Cokeley <Becky.Cokeley@intusurg.com>; Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>

Subject: RE: Marin General- reprocessing Si instruments

Thank you, Erin, and we have been made aware and we are in the process with this account. We will be in contact with each of you. Thanks, LD

From: Erin Grinberg

Sent: Friday, November 22, 2019 11:27 AM

To: Adam Clark <Adam.Clark@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>

Cc: Lucas Docter <Lucas.Docter@intusurg.com>; Becky Cokeley <Becky.Cokeley@intusurg.com>; Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>

Subject: Marin General- reprocessing Si instruments

Adam and AJ,

Becky (ASM) was in Marin's robotic steering committee meeting yesterday where it was brought to her attention that they are using reprocessed instruments.

They are very proud of this and celebrated the cost savings.

We need to take the first step in the process of communication with them.

This would be a verbal from the CSM correct?

Also, AJ have you seen this on the on-site system yet?

Thank you,

Erin Grinberg

Clinical Sales Director-

Northern California & Oregon

916-671-2929 erin.grinberg@intusurg.com

Intuitive.com

Exhibit 7

From: Lucas Docter [Lucas.Docter@intusurg.com]
Sent: 12/2/2019 9:17:53 PM
To: Becky Cokeley [Becky.Cokeley@intusurg.com]
CC: AJ Inacay [aj.inacay@intusurg.com]; Adam Clark [Adam.Clark@intusurg.com]; Bryce Partridge [Bryce.Partridge@intusurg.com]; Erin Grinberg [Erin.Grinberg@intusurg.com]; Kristin Cooke [Kristin.Cooke@intusurg.com]
Subject: Re: Marin General- reprocessing Si instruments

Thank you, Becky!!

Lucas J Docter
Regional Vice President, U.S. Key Accounts
INTUITIVE
281-639-4897

On Dec 2, 2019, at 7:23 PM, Becky Cokeley <Becky.Cokeley@intusurg.com> wrote:

The letter has been communicated to the individuals outlined below. AJ, I bcc'd you on the communication. Please let me know if you have any further questions.

Thanks,

Becky Cokeley
Area Sales Manager

Mobile: 707.637.6931
Becky.Cokeley@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: AJ Inacay <aj.inacay@intusurg.com>
Sent: Monday, December 2, 2019 12:41 PM
To: Adam Clark <Adam.Clark@intusurg.com>; Becky Cokeley <Becky.Cokeley@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Hi Becky,

Apologies for the delay. Please see the attached patient safety implications letter for Marin General. Please e-mail this letter to Mr. Pifer, Mr. Domanico and Mr. Friedenber and cc Gabrielle Javier, Michael Geremia, and Dr. Yu. Please also forward the e-mail to me or you can bcc me on the outgoing e-mail so we can file it into our records.

Note that the letter has been sent to the customer account via USPS or FedEx and should arrive either tomorrow or the follow day. Thank you and please let me know if you need any further assistance.

P.S. The last remanufactured instrument use at this account was on November 26th

AJ

From: Adam Clark <Adam.Clark@intusurg.com>

Sent: Tuesday, November 26, 2019 8:07 AM

To: Becky Cokeley <Becky.Cokeley@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>

Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>

Subject: RE: Marin General- reprocessing Si instruments

Also important for MG to understand that we will be canceling their SLISA in short order if this keeps happening. How did that go over?

From: Becky Cokeley <Becky.Cokeley@intusurg.com>

Sent: Monday, November 25, 2019 6:31 PM

To: Lucas Docter <Lucas.Docter@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>

Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>

Subject: RE: Marin General- reprocessing Si instruments

Update on Marin from today:

- <!--[if !supportLists]--><!--[endif]-->Met with OR Director and Director of Purchasing today. They made the decision about Si instrumentation strictly based on finances following a recommendation from a 3rd party consulting firm, ECRI.
- <!--[if !supportLists]--><!--[endif]-->ECRI told Marin they were spending \$294,000 per year on *Si instrument repairs*. We talked through this in the meeting today and clarified that Intuitive does not repair our Si instruments. We believe the \$294,000 might be the total of Marin's I&A spend for the past year – but I'm waiting on Customer Service to help confirm this. We also reviewed dollars spent this year on Advanced Exchange.
- <!--[if !supportLists]--><!--[endif]-->The company they are using for the Si instrument remanufacture is **SIS – Surgical Instrument Service Co, Inc.**
- <!--[if !supportLists]--><!--[endif]-->This company claims to have 2 Intuitive engineers working for them and says they are already doing business with Kaiser and Banner.
- <!--[if !supportLists]--><!--[endif]-->I have attached 2 documents I got from the customer today:
 - <!--[if !supportLists]--><!--[endif]-->Summary of Quality and Reliability Measures
 - <!--[if !supportLists]--><!--[endif]-->Da Vinci EndoWrist Repair FAQs
- <!--[if !supportLists]--><!--[endif]-->I got a brief look at their pricing structure, which appears to be 40-50% discount. The MCS was \$1700 on this price list, for example.
- <!--[if !supportLists]--><!--[endif]-->The customer does not want to risk patient safety, and after our dialogue, suggested that perhaps they made this decision based on false information about repairs.
- <!--[if !supportLists]--><!--[endif]-->Once I have a chance to send the follow-up to Marin, we'll give them a day or so to digest and then circle back to see what their decision will be moving forward.

Happy to discuss any specifics or questions live. Have a great night,

Becky Cokeley
Area Sales Manager

Mobile: 707.637.6931
Becky.Cokeley@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: Lucas Docter <Lucas.Docter@intusurg.com>
Sent: Monday, November 25, 2019 9:29 AM
To: Bryce Partridge <Bryce.Partridge@intusurg.com>; Becky Cokeley <Becky.Cokeley@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Agreed, thank you, Becky!!

Lucas J. Docter
Regional Vice President, U.S. Key Accounts
Mobile: 281-639-4897
Lucas.Docter@IntuSurg.com

INTUITIVE

From: Bryce Partridge <Bryce.Partridge@intusurg.com>
Sent: Friday, November 22, 2019 8:14 PM
To: Becky Cokeley <Becky.Cokeley@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>
Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

Becky,

I know this has consumed your last couple of days.....thank you on behalf of the team for handling such a sensitive subject and also thinking strategically about leveraging this into an Executive meeting.....who knows, Xi discussion?!?!?

Have a great weekend

Bryce Partridge
Area Sales Director – West

Mobile: 949-287-9272
Bryce.Partridge@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

From: Becky Cokeley <Becky.Cokeley@intusurg.com>

Sent: Friday, November 22, 2019 4:30 PM

To: AJ Inacay <aj.inacay@intusurg.com>; Lucas Docter <Lucas.Docter@intusurg.com>; Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>

Cc: Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>

Subject: RE: Marin General- reprocessing Si instruments

Thanks AJ.

Quick update for the group:

- <!--[if !supportLists]--><!--[endif]-->I have been in touch with the following individuals by phone:
 - <!--[if !supportLists]--><!--[endif]-->Dr. James Yu, Urologist and Robotics Medical Director
 - <!--[if !supportLists]--><!--[endif]-->Gabrielle Javier, Robotics Coordinator
 - <!--[if !supportLists]--><!--[endif]-->John Ayers, Perioperative Purchasing Director (brief conversation, meeting with him live next week)
- <!--[if !supportLists]--><!--[endif]-->I support proactively sending the letter, and suggest sending it to the following:
 - <!--[if !supportLists]--><!--[endif]-->Robotics Coordinator – Gabrielle Javier
 - <!--[if !supportLists]--><!--[endif]-->Surgical Services Director – Michael Geremia
 - <!--[if !supportLists]--><!--[endif]-->Chief Medical Officer – Dr. Eric Pifer
 - <!--[if !supportLists]--><!--[endif]-->Robotics Medical Director – Dr. James Yu
 - <!--[if !supportLists]--><!--[endif]-->Chief Executive Officer - Lee Domanico
 - <!--[if !supportLists]--><!--[endif]-->President & Chief Operations Officer - Jon Friedenber

I'm working to get in front of the C-suite next week. Will keep you posted. Please let us know if/when the letter goes out. Will it be mailed, or via email?

Thanks,

Becky Cokeley
Area Sales Manager

Mobile: 707.637.6931
Becky.Cokeley@intusurg.com

INTUITIVE

1020 Kifer Rd.
Sunnyvale, CA 94086-5304 USA
intuitive.com

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- <!--[if !supportLists]--><!--[endif]-->C-Suite - Lee Domanico

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AJ Inacay
Product Marketing Manager – I&A Services

Mobile: 1 925 416 9912
Direct: 1 408 523 7973
aj.inacay@intusurg.com

INTUITIVE

3410 Central Expressway
Santa Clara, CA 95051 USA
intuitive.com

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To: Erin Grinberg <Erin.Grinberg@intusurg.com>; Adam Clark <Adam.Clark@intusurg.com>; AJ Inacay <aj.inacay@intusurg.com>
Cc: Becky Cokeley <Becky.Cokeley@intusurg.com>; Kristin Cooke <Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>
Subject: RE: Marin General- reprocessing Si instruments

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From: Erin Grinberg
Sent: Friday, November 22, 2019 11:27 AM
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Cc: Lucas Docter <Lucas.Docter@intusurg.com>; Becky Cokeley <Becky.Cokeley@intusurg.com>; Kristin Cooke

<Kristin.Cooke@intusurg.com>; Bryce Partridge <Bryce.Partridge@intusurg.com>

Subject: Marin General- reprocessing Si instruments

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Also, AJ have you seen this on the on-site system yet?

Thank you,

Erin Grinberg
Clinical Sales Director-
Northern California & Oregon
916-671-2929 erin.grinberg@intusurg.com
Intuitive.com

Exhibit 8

From: Woody Groves [Woody.Groves@intusurg.com]
Sent: 9/14/2019 9:22:33 AM
To: Matt Heick [Matt.Heick@intusurg.com]
CC: AJ Inacay [aj.inacay@intusurg.com]; Jennifer Scott [Jennifer.scott@intusurg.com]
Subject: Re: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Thanks Matt. AJ, call me on Monday if you get a minute.

Sent from my iPhone
Woody Groves

On Sep 14, 2019, at 10:14 AM, Matt Heick <Matt.Heick@intusurg.com> wrote:

AJ,

Can you provide my team with assistance on dealing with SIS. They are attempting to reprocess instruments at UF Shands.

Thank you,

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive
Peachtree Corners, GA 30092

<image002.jpg>

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 6:09 PM
To: Matt Heick <Matt.Heick@intusurg.com>
Subject: Re: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Thanks Matt. Who do I need to talk to? I'm on vacation next week.

Sent from my iPhone
Woody Groves

On Sep 13, 2019, at 5:46 PM, Matt Heick <Matt.Heick@intusurg.com> wrote:

Woody,

Thanks for brining to my attention. We have a formal internal process for these situations. Let me know if you have further issues after connecting with our internal folks or if you see this surface in other accounts.

This would void their current warranty and creates patient safety issues. Happy to discuss next week upon my return from vacation...

Matt Heick
Clinical Sales Director
GA-SC-North FL

Direct: 678.938.0102
Matt.heick@intusurg.com

Intuitive Surgical
5655 Spalding Drive
Peachtree Corners, GA 30092

<image003.jpg>

From: Woody Groves <Woody.Groves@intusurg.com>
Sent: Friday, September 13, 2019 8:04 AM
To: Anna Samples <Anna.Samples@intusurg.com>; Jennifer Scott <Jennifer.scott@intusurg.com>; Matt Heick <Matt.Heick@intusurg.com>
Subject: Fwd: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

FYI. I'm researching our answer and response now.

Sent from my iPhone
Woody Groves

Begin forwarded message:

From: "Watkins, Dawn E." <WATKID@shands.ufl.edu>
Date: September 12, 2019 at 6:25:19 PM EDT
To: Woody Groves <Woody.Groves@intusurg.com>
Cc: "Wigglesworth, Susan J." <wiggjsj@shands.ufl.edu>
Subject: [EXTERNAL] FW: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Hi Woody,

Who needs a sales force when you're on a GPO contract? ☺

Can you help us confirm if the use of a refurbished EndoWrist would have a negative impact on our warranty?

A quick response would be great. At this rate, we'll be asked again by Monday.

Best regards,
Dawn

Dawn Watkins, MBA, CMRP
Director of Strategic Sourcing
UF Health Shands
watkid@shands.ufl.edu
Cell: 352-246-2500

From: Cassidy,Manuela <manuela.cassidy@vizientinc.com>
Sent: Thursday, September 12, 2019 4:37 PM
To: Carroll-Mazeli, Andy <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggjsj@shands.ufl.edu>
Cc: Alltop, Shirley <alltos@shands.ufl.edu>; Watkins, Dawn E. <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>
Subject: RE: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

CAUTION! This email came from outside UF or UF Health. Exercise extra caution clicking links and opening attachments from any and all senders.

Hi Andy and Susan,

Julie Birdsong, Implementation Services, Senior Director would like to know if you have any interest in setting-up a call with SIS to learn more about his category? She is looking at setting-up a time for next week. Can you please provide me your feedback?

Many thanks,
Manuela

From: Cassidy,Manuela
Sent: Monday, September 9, 2019 3:47 PM
To: 'Carroll-Mazeli, Andy' <Andy.Carroll-Mazeli@jax.ufl.edu>; Wigglesworth, Susan J. <wiggsj@shands.ufl.edu>
Cc: 'Alltop, Shirley' <alltos@shands.ufl.edu>; 'Watkins, Dawn E.' <WATKID@shands.ufl.edu>; Mele, Christopher <Christopher.Mele@jax.ufl.edu>; Story,Vicky <Vicky.Story@vizientinc.com>; Price,John <john.price@vizientinc.com>
Subject: da Vinci EndoWrist Savings Opportunity (MS4788 - Surgical Instrument Repair)

Andy and Susan,

Two of our members, Kaiser Permanente and Legacy Health System are capturing savings by using Intuitive Surgical Endowrist refurbishment products. Surgical Instrument Service Company (SIS) is now the only supplier providing refurbishment to Intuitive Surgical's da Vinci EndoWrist. SIS offers a refurbished da Vinci EndoWrist at approximately 40% savings.

Since Intuitive Surgical is an off contract vendor, there's incremental GPO volume associated with moving that spend to SIS for refurbishment in addition to over 40% on line item savings.

Please see attached initial proposed savings. Please let me know if I can schedule an onsite presentation to learn more about this category and clarify additional questions.

Thanks,

Manuela Cassidy, MBA
Enterprise Client Manager
M (904) 608-7831
manuela.cassidy@vizientinc.com

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ITHelpNow@intusurg.com.

FILER'S ATTESTATION

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatories identified above have concurred in this filing.

Dated: November 11, 2024

By: /s/ Kenneth A. Gallo

Kenneth A. Gallo

Kenneth A. Gallo (*pro hac vice*)
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

2001 K Street, NW

Washington, DC 20006-1047

Telephone: (202) 223-7300

Facsimile: (202) 204-7420

Email: kgallo@paulweiss.com

*Attorney for Defendant
Intuitive Surgical, Inc.*